

EIGHTY-THIRD DAY

FRIDAY, MAY 23, 1997

PROCEEDINGS

The Senate met at 9:30 a.m. pursuant to adjournment and was called to order by President Pro Tempore Zaffirini.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Galloway, Harris, Haywood, Lindsay, Lucio, Luna, Madla, Moncrief, Nelson, Nixon, Ogden, Patterson, Ratliff, Shapiro, Shapleigh, Sibley, Truan, Wentworth, West, Whitmire, Zaffirini.

The President Pro Tempore announced that a quorum of the Senate was present.

The Reverend Dr. Robert D. Nix, Jr., Saint Matthew's Episcopal Church, Austin, offered the invocation as follows:

O Lord God everlasting, You reign over nations and states, reign over us here. You can, in the power of Your mercy, break down the walls that divide and entrap people. Starting with us here, create new hearts open to You and so renew each of us in spirit that . . .

Your law may be our study
Your truth our delight
Your communities our care
Your people our crown
Your righteousness our pleasure
Your service the government.

So shall this State of Texas through You be established in peace and all Your people know Your blessing through Jesus Christ our Lord. Amen.

On motion of Senator Truan and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

CAPITOL PHYSICIAN

Senator Ogden was recognized and presented Dr. Henry Boehm of Brenham as the "Doctor for the Day."

The Senate welcomed Dr. Boehm and thanked him for his participation in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians.

GUEST PRESENTED

Senator Truan was recognized and introduced to the Senate Guadalupe Cassani Cardoso of Mexico City, Deputy Director of Evaluation at the Office of Technological Modernization.

The Senate welcomed Mrs. Cassani.

FLOOR PRIVILEGES GRANTED

(Senate Rule 2.02)

On motion of Senator Sibley and by unanimous consent, Senate Rule 2.02, relating to floor privileges, was suspended to grant Kevin McGraw of Waco permission to be seated at Senator Sibley's desk today.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 506

Senator Luna submitted the following Conference Committee Report:

Austin, Texas

May 21, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 506** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

LUNA
ELLIS
CAIN
SHAPLEIGH

DUTTON
ALVARADO
UHER
HILBERT
ZBRANEK

On the part of the Senate

On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1235**

Senator Ratliff submitted the following Conference Committee Report:

Austin, Texas
May 21, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

I, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1235** have had the same under consideration, and beg to report it back with the commendation that it do pass.

RATLIFF
BROWN
SIBLEY
TRUAN
ZAFFIRINI

On the part of the Senate

JUNELL
CUELLAR
RANGEL
WEST
HAGGERTY

On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1710**

Senator Harris submitted the following Conference Committee Report:

Austin, Texas
May 20, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

I, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1710** have had the same under consideration, and beg to report it back with the commendation that it do pass.

HARRIS
WENTWORTH
DUNCAN
LUNA
ELLIS

On the part of the Senate

G. LEWIS
THOMPSON
CRABB
SOLIS
LUNA

On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

SENATE BILL 1284 WITH HOUSE AMENDMENT

Senator Gallegos called **SB 1284** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **SB 1284** as follows:

(1) On page 10, strike lines 12-14 and substitute "(c) In a criminal proceeding under Subsection (a)(1), (2), or (3), it is not necessary to prove recklessness or criminal negligence."

(2) On page 16, strike lines 20-25.

(3) On page 17, strike lines 1-25.

(4) On page 18, strike lines 1-25.

(5) On page 19, strike line 1 and substitute "[Sections 345.106-345.130 reserved for expansion]"

The amendment was read.

Senator Gallegos moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 1284** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate on the bill: Senators Gallegos, Chair; Madla, Cain, Carona, and West.

SENATE BILL 271 WITH HOUSE AMENDMENT

Senator Gallegos called **SB 271** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **SB 271** as follows:

(1) In SECTION 1 of the bill, in proposed Section 102.56(a), Alcoholic Beverage Code (committee printing page 1, line 11), insert after the period the following: "Subsections (b) and (d) apply only to the delivery of a brand of ale, beer, or malt liquor to a holder of a mixed beverage permit or a private club permit whose premises is located in a county in which 8,000 or more

coholic beverage licenses or permits of any type have been issued under this code and are in effect."

(2) In SECTION 1 of the bill, in proposed Section 102.56(b), Alcoholic Beverage Code (committee printing page 1, line 18), insert between "located" and "outside": "inside that county and".

(3) In SECTION 1 of the bill, in proposed Section 102.56(d), Alcoholic Beverage Code (committee printing page 2, line 5), insert between "located" and "outside": "inside that county and".

The amendment was read.

On motion of Senator Gallegos, the Senate concurred in the House amendment to SB 271 by a viva voce vote.

SENATE BILL 461 WITH HOUSE AMENDMENT

Senator Moncrief called SB 461 from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

amendment

Amend SB 461 by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the authority of the comptroller to contract for certain tax collection services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 111, Tax Code, is amended by adding Sections 111.0035 and 111.0036 to read as follows:

Sec. 111.0035. ADVANCED DATABASE SYSTEM. (a) The comptroller may contract with an appropriate vendor to develop and implement an advanced database system to enhance tax collections.

(b) Subject to Subsection (c), the total amount of compensation paid to a vendor that develops, implements, and maintains the advanced database system is equal to the product of:

(1) the percentage stated in the contract; and

(2) the amount of revenue collected from taxpayers by the comptroller, after all available administrative and judicial appeals are exhausted, as a result of audit and enforcement actions taken on cases identified from the system.

(c) The amount of compensation paid to a vendor under Subsection (b) may not exceed the maximum amount, if any, stated in the contract between the comptroller and the vendor.

(d) The comptroller may pay compensation to a vendor under this section periodically at the times specified in the contract between the comptroller and a vendor. The comptroller shall determine the amount of a periodic payment in accordance with Subsections (b) and (c). In computing the amount under subsection (b)(2), the comptroller may include a case only if the case:

(1) becomes administratively final during the period covered by the payment; and

(2) is not the subject of litigation at the end of that period.

(e) The comptroller may pay a vendor under this section only through warrants issued or electronic funds transfers initiated by the comptroller. The comptroller shall account for the compensation as a subtraction from tax collections and not as a general expense of the comptroller.

(f) Except as provided by Subsection (g), the comptroller shall award a contract made under this section through a competitive bidding process that complies with Section 2155.132, Government Code, and the rules adopted by the General Services Commission relating to delegated purchases. If the comptroller receives not more than three bids through the competitive bidding process, the comptroller shall report the number of bidders to the Legislative Budget Board before awarding the contract.

(g) The comptroller may enter into separate contracts with additional appropriate vendors willing and able to develop and implement an advanced database system to enhance tax collections at the same rate and under the same terms and conditions as the contract awarded through competitive bidding.

(h) Except as specifically provided by this section, the comptroller may include any term or condition in a contract made under this section that the comptroller considers necessary or advisable to maximize enhancement of tax collections while otherwise protecting the state's interests.

(i) The comptroller shall report semiannually to the Legislative Budget Board the:

(1) amount of revenue collected under this section; and

(2) amount of compensation awarded to a vendor under this section.

(j) A person acting on behalf of this state under a contract authorized by this section does not exercise any of the sovereign power of this state, except that the person is an agent of this state for purposes of developing and implementing an advanced database system to enhance tax collections.

(k) The comptroller may provide to a person acting on behalf of this state under a contract authorized by this section any confidential information in the custody of the comptroller that is necessary to develop and implement an advanced database system to enhance tax collections and that the comptroller is not prohibited from sharing under an agreement with another state or the federal government. A person who receives confidential information under this subsection and each employee or agent of that person is subject to each prohibition against disclosure of the information that applies to the comptroller or an employee of the comptroller. A person, employee, or agent who receives confidential information under this subsection and improperly discloses that information is subject to the same penalties and sanctions that would apply to the comptroller or an employee of the comptroller for that disclosure.

Sec. 111.0036. OUT-OF-STATE AUDITS. (a) The comptroller may contract with one or more appropriate persons to perform tax audits in any state that is not covered by a comptroller field office. A contract may provide for a person to perform tax audits in more than one state.

(b) Subject to Subsection (c), the amount of compensation paid to a person performing tax audits under this section is equal to the product of:

(1) the percentage stated in the contract between the comptroller and the person; and

(2) the amount of revenue collected from taxpayers by the comptroller, after all available administrative and judicial appeals are exhausted, as a result of those audits.

(c) The maximum percentage rate stated in a contract may not exceed 12 percent. In addition, the amount of compensation paid to a person under Subsection (b) may not exceed the maximum amount, if any, stated in the contract between the comptroller and the person.

(d) The comptroller may pay compensation to a person under this section periodically at the times specified in the contract between the comptroller and the person. The comptroller shall determine the amount of a periodic payment in accordance with Subsections (b) and (c). In computing the amount under Subsection (b)(2), the comptroller may include a case only if the case:

(1) becomes administratively final during the period covered by the payment; and

(2) is not the subject of litigation at the end of that period.

(e) The comptroller may pay a person under this section only through warrants issued or electronic funds transfers initiated by the comptroller. The comptroller shall account for the compensation as a subtraction from tax collections and not as a general expense of the comptroller.

(f) Except as provided by Subsection (g), the comptroller shall award a contract made under this section through a competitive bidding process that complies with Section 2155.132, Government Code, and the rules adopted by the General Services Commission relating to delegated purchases. If the comptroller receives not more than three bids through the competitive bidding process, the comptroller shall report the number of bidders to the Legislative Budget Board before awarding the contract.

(g) The comptroller may enter into separate contracts with additional appropriate persons willing and able to perform tax audits in other states that are not covered by comptroller field offices at the same rate and under the same terms and conditions as the contract awarded through competitive bidding.

(h) The comptroller shall report semiannually to the Legislative Budget Board the:

(1) amount of revenue collected under this section; and

(2) amount of compensation awarded to a person with whom the comptroller contracts under this section.

(i) A person acting on behalf of this state under a contract authorized by this section does not exercise any of the sovereign power of this state, except that the person is an agent of this state for purposes of performing tax audits.

(j) The comptroller may provide to a person acting on behalf of this state under a contract authorized by this section any confidential information in the custody of the comptroller relating to a taxpayer that is necessary to the audit of the taxpayer and that the comptroller is not prohibited from sharing under an agreement with another state or the federal government. A person who

receives confidential information under this subsection and each employee or agent of that person are subject to each prohibition against disclosure of confidential information obtained from a taxpayer or this state in connection with a tax audit that applies to the comptroller or an employee of the comptroller. A person, employee, or agent who receives confidential information under this subsection and improperly discloses that information is subject to the same penalties and sanctions that would apply to the comptroller or an employee of the comptroller for that disclosure.

SECTION 2. An initial contract made under Section 111.0035 or 111.0036, Tax Code, as added by this Act, shall terminate not later than August 31, 1999. The comptroller may extend an initial contract for one or more additional terms beyond that date.

SECTION 3. The revenue resulting from tax audits conducted by any person with whom the comptroller contracts under Section 111.0036, Tax Code, as added by this Act, is appropriated to the comptroller for the fiscal biennium ending August 31, 1999. The comptroller may use this revenue only to pay contract expenses and the comptroller's direct administrative costs associated with those contracts. If the comptroller determines that the revenue appropriated to the comptroller under this section exceeds the amount necessary to pay those expenses and costs, the comptroller shall transfer the amount of the excess to the general revenue fund or any dedicated or special funds to which the excess amount belongs.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Moncrief, the Senate concurred in the House amendment to **SB 461** by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 580

Senator Moncrief called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 580** and moved that the request be granted.

The motion prevailed.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 580** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate on the bill: Senators Moncrief, Chair; Patterson, Cain, Ellis, and Shapiro.

SENATE BILL 291 WITH HOUSE AMENDMENTS

Senator Patterson called **SB 291** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 291** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the regulation of orthotists and prosthetists; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 132, Revised Statutes, is amended by adding Article 8920 to read as follows:

Art. 8920. REGULATION OF ORTHOTISTS AND PROSTHETISTS

Sec. 1. SHORT TITLE. This article may be cited as the Orthotics and Prosthetics Act.

Sec. 2. DEFINITIONS. In this Act:

- (1) "Board" means the Texas Board of Orthotics and Prosthetics.
- (2) "Commissioner" means the commissioner of public health.
- (3) "Custom-fabricated" means an orthosis or prosthesis has been designed, prescribed, fabricated, fitted, and aligned specifically for an individual in accordance with sound biomechanical principles.
- (4) "Custom-fitted" means an orthosis or prosthesis that has been adjusted, prescribed, fitted, and aligned for a specific individual according to sound biomechanical principles.
- (5) "Department" means the Texas Department of Health.
- (6) "License" includes a license, registration, certificate, accreditation, or other authorization issued under this Act to engage in an activity regulated under this Act.
- (7) "Licensed orthotist" or "LO" means a person licensed under this Act who practices orthotics and represents the person to the public by a title or description of services that includes the term "orthotics," "orthotist," "brace," "orthoses," "orthotic," or a similar title or description of services.
- (8) "Licensed orthotist assistant" or "LOA" means a person licensed under this Act who assists and is under the supervision at an orthotic or prosthetic facility of a licensed orthotist responsible for the acts of the assistant.
- (9) "Licensed prosthetist" or "LP" means a person licensed under this Act who practices prosthetics and represents the person to the public by a title or description of services that includes the term "prosthetics," "prosthetist," "protheses," "prosthetic," "artificial limb," or a similar title or description of services.
- (10) "Licensed prosthetist assistant" or "LPA" means a person licensed under this Act who assists and is under the supervision at an orthotic or prosthetic facility of a licensed prosthetist responsible for the acts of the assistant.
- (11) "Licensed prosthetist orthotist" or "LPO" means a person licensed under this Act who practices both prosthetics and orthotics and

represents the person to the public by a title or description of services that includes the terms "prosthetics orthotics," "prosthetist orthotist," "prosthetic orthotic," "artificial limb," "brace," or a similar title or description of services.

(12) "Licensed prosthetist orthotist assistant" or "LPOA" means a person licensed under this Act who assists and is under the supervision at an orthotic or prosthetic facility of a licensed prosthetist orthotist or a licensed prosthetist and licensed orthotist responsible for the acts of the assistant.

(13) "Orthosis" means a custom-fabricated or custom-fitted medical device designed to provide for the support, alignment, prevention, or correction of neuromuscular or musculoskeletal disease, injury, or deformity. The term does not include a fabric or elastic support, corset, arch support, low-temperature plastic splint, truss, elastic hose, cane, crutch, soft cervical collar, orthosis for diagnostic or evaluation purposes, dental appliance, or any other similar device carried in stock and sold by a drugstore, department store, or corset shop.

(14) "Orthotic or prosthetic facility" means a physical site, including a building or office, where the profession and practice of orthotics or prosthetics normally takes place.

(15) "Orthotics" means the science and practice of measuring, designing, fabricating, assembling, fitting, adjusting, or servicing an orthosis under an order from a licensed physician, chiropractor, or podiatrist for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity.

(16) "Person" means an individual, corporation, partnership, association, or other organization.

(17) "Profession of orthotics or prosthetics" means allied health care medical services used to identify, prevent, correct, or alleviate acute or chronic neuromuscular or musculoskeletal dysfunctions of the human body that support and provide rehabilitative health care services concerned with the restoration of function, prevention, or progression of disabilities resulting from disease, injury, or congenital anomalies. Orthotic and prosthetic services include direct patient care, including consultation, evaluation, treatment, education, and advice to maximize the rehabilitation potential of disabled individuals.

(18) "Prosthesis" means a custom-fabricated or fitted medical device that is not surgically implanted and is used to replace a missing limb, appendage, or other external human body part, including an artificial limb, hand, or foot. The term does not include an artificial eye, ear, finger, or toe, a dental appliance, a cosmetic device, including an artificial breast, eyelash, or wig, or other device that does not have a significant impact on the musculoskeletal functions of the body.

(19) "Prosthetics" means the science and practice of measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a prosthesis under an order from a licensed physician, chiropractor, or podiatrist.

(20) "Registered orthotic technician" means a person registered under this Act who fabricates, assembles, and services orthoses under the

direction of a licensed orthotist or licensed orthotist assistant responsible for the acts of the technician.

(21) "Registered prosthetic orthotic technician" means a person registered under this Act who fabricates, assembles, or services prostheses and orthoses under the direction of a licensed orthotist and licensed prosthetist, a licensed prosthetist orthotist, or a licensed orthotist assistant, licensed prosthetist assistant, or licensed prosthetist orthotist assistant responsible for the acts of the technician.

(22) "Registered prosthetic technician" means a person registered under this Act who fabricates, assembles, or services prostheses under the direction of a licensed prosthetist or licensed prosthetist assistant responsible for the acts of the technician.

Sec. 3. BOARD. (a) The Texas Board of Orthotics and Prosthetics is established as a part of the department and shall perform its duties as a board with the department.

(b) The board consists of six members appointed by the governor with the advice and consent of the senate. Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(c) Members of the board are appointed for staggered six-year terms, with two members' terms expiring on February 1 of each odd-numbered year.

(d) One member of the board must be a licensed orthotist, be a resident of this state, and have practiced orthotics for the five years preceding the date of appointment. One member of the board must be a licensed prosthetist, be a resident of this state, and have practiced prosthetics for the five years preceding the date of appointment. One member of the board must be a licensed prosthetist orthotist, be a resident of this state, and have practiced prosthetics and orthotics for the five years preceding the date of appointment. One member of the board must be a representative of the public who uses an orthosis. One member of the board must be a representative of the public who uses a prosthesis. One member of the board must be a representative of the public who does not use an orthosis or prosthesis.

(e) A vacancy on the board shall be filled by appointment by the governor of an individual who has the appropriate qualifications. The appointed person serves for the remainder of the term.

(f) A member of the board is not liable for damages in a civil action for any act performed in good faith in the execution of the member's duties.

(g) The board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this Act expires September 1, 2009.

Sec. 4. REMOVAL FROM BOARD. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required for appointment to the board;

(2) does not maintain during service on the board the qualifications required for appointment to the board;

(3) violates a prohibition established by this Act;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that the action was taken when a ground for removal of a member of the board existed.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the ground. The presiding officer shall then notify the governor that a potential ground for removal exists.

Sec. 5. BOARD POWERS AND DUTIES. (a) The board shall review applications for a license at least once each year at reasonable times and places designated by the board.

(b) The board may collect license application fees, renewal fees, examination fees, and other fees for other administrative expenses. If the General Appropriations Act does not set the amount of those fees, the board shall set the fees in amounts reasonable and necessary for the administration and implementation of this Act.

(c) The board shall approve any examination required for a license under this Act. Each examination shall be offered at least once each year.

(d) The board may:

(1) investigate complaints;

(2) issue, suspend, deny, and revoke licenses;

(3) reprimand license holders and place license holders on probation;

(4) issue subpoenas; and

(5) hold hearings.

(e) The board shall keep an information file about each complaint that is filed with the board relating to a person or entity regulated by the board. If a written complaint that the board has authority to resolve is filed with the board, the board, at least as frequently as quarterly and until the final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(f) The board shall propose rules consistent with this Act to carry out its duties in administering this Act and submit the proposed rules to the attorney general for review. The board shall adopt rules consistent with the advice of the attorney general. In adopting rules, the board shall consider the applicable policies and procedures of the department.

(g) The commissioner, with the advice of the board, shall appoint an executive director to administer this Act. The board may use personnel, facilities, furniture, equipment, and other items supplied by the department to administer this Act.

(h) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program shall require intra-agency posting of all nonentry level positions concurrently with any public posting.

(i) The executive director or the executive director's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for board employees shall be based on the system established under this subsection.

(j) The board shall prepare information of consumer interest describing the regulatory functions of the board and legal rights of consumers as provided by this Act.

(k) The board shall assist legal authorities in the prosecution of any person violating this Act.

(l) The board shall prepare or approve continuing education programs for license holders and shall adopt rules that require a license holder to participate in an approved continuing education program to renew a license issued under this Act.

(m) The board shall develop and implement policies that clearly define the respective responsibilities of the governing body of the board and the staff of the board.

Sec. 6. PUBLIC INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and describing the procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies.

(b) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notification:

(1) on each registration form, application, or written contract for services of an individual or entity regulated by the board;

(2) on a sign prominently displayed in the place of business of each individual or entity regulated by the board; or

(3) in a bill for service provided by an individual or entity regulated by the board.

(c) The board shall list along with its regular telephone number the toll-free telephone number that may be called to present a complaint about a person regulated or required to be regulated under this Act if the toll-free number is established under other state law.

Sec. 7. PUBLIC PARTICIPATION IN BOARD MEETINGS. The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

Sec. 8. PROGRAM ACCESSIBILITY. The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs. The board shall also comply with federal and state laws for program and facility accessibility.

Sec. 9. TRAINING; STANDARDS OF CONDUCT INFORMATION. Each board member shall comply with the board member training requirements established by any other state agency that is given authority to establish the requirements for the board.

Sec. 10. OPEN MEETINGS AND ADMINISTRATIVE PROCEDURE REQUIREMENTS. The board is subject to Chapters 551 and 2001, Government Code.

Sec. 11. ORGANIZATION OF BOARD. (a) The members of the board shall elect from the membership of the board a presiding officer, a secretary, and other officers required for the conduct of business. Special meetings of the board shall be called by the presiding officer or on the written request of any three members. The board may adopt rules necessary to govern its proceedings.

(b) The executive director shall keep a record of each meeting of the board and maintain a register containing the names of all persons holding a license under this Act. The record and register shall be open at all times to public inspection. On March 1 of each year, the executive director shall send an official copy of the register of license holders to the secretary of state for permanent record. A certified copy of the register is admissible as evidence in any court of this state.

Sec. 12. COMPENSATION. A member of the board is entitled to compensation and reimbursement of the member's travel expenses as provided by the General Appropriations Act.

Sec. 13. EFFECT OF LOBBYING ACTIVITY. A person may not serve as a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Sec. 14. PUBLIC MEMBERSHIP RESTRICTION. A person is not eligible for appointment by the governor as a public member of the board if the person or person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization regulated by the board or receiving funds from the board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the board or receiving funds from the board; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

Sec. 15. CONFLICT OF INTEREST RESTRICTIONS. (a) An officer, employee, or paid consultant of a Texas trade association in the field of health care may not be a member or employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(b) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of health care may not be a member of the board and may not be an employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount

prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

Sec. 16. AUDIT. The financial transactions of the board are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Sec. 17. REPORT TO GOVERNOR AND LEGISLATURE. During January of each year, the board shall file with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding year.

Sec. 18. EQUAL EMPLOYMENT OPPORTUNITY POLICIES. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel, that are in compliance with Chapter 21, Labor Code;

(2) a comprehensive analysis of the board workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underutilization in the board workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underutilization.

(b) A policy statement prepared under Subsection (a) of this section must cover an annual period, be updated annually, be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1) of this section, and be filed with the governor's office.

(c) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (b) of this section. The report may be made separately or as part of other biennial reports to the legislature.

Sec. 19. NOTICE OF STANDARDS OF CONDUCT. The board shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 20. APPROPRIATIONS TO TEXAS DEPARTMENT OF HEALTH. The department shall receive and account for funds derived under this Act. The department shall deposit all funds collected under this Act to the credit of the general revenue fund.

Sec. 21. EXEMPTIONS. (a) This Act does not restrict a license holder of another state agency from performing health care services within the scope of the license holder's applicable licensing act if:

(1) the license holder:

(A) does not represent to others that the license holder practices the profession of orthotics or prosthetics; or

(B) does not use the terms "prosthetist," "prosthesis," "prosthetic," "artificial limb," "orthotist," "orthosis," "orthotic," or "brace" or the letters "LP," "LPA," "LO," "LOA," "LPO," or "LPOA" or any derivative of those terms or letters in connection with the license holder's name or practice; and

(2) the license holder practices in conformance with the applicable laws and rules relating to the person's license and does not violate Section 22 of this Act.

(b) This Act does not apply to the activities and services of a person acting as a student in orthotics or prosthetics who is pursuing a course of study in a prosthetic or orthotic program at a college or university recognized and accredited by the Commission on Accreditation of Allied Health Education Programs or an orthotic or prosthetic educational program having educational standards that are equivalent to or exceed the standards adopted by the Commission on Accreditation of Allied Health Education Programs or who is working in a recognized training center or research facility, if those activities and services constitute a part of the person's course of study in the discipline in which the person's supervisor is licensed under this Act.

(c) This Act does not apply to:

(1) a podiatrist practicing under the law regulating podiatry (Article 4567 et seq., Revised Statutes);

(2) a doctor of chiropractic practicing under the law regulating chiropractic (Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes));

(3) an occupational therapist practicing under the law regulating occupational therapy (Occupational Therapy Practice Act (Article 8851, Vernon's Texas Civil Statutes)); or

(4) a physical therapist practicing under the law regulating physical therapy (Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes)).

(d) This Act does not apply to a pedorthist certified by the Board for Certification in Pedorthics. For the purposes of this subsection, a certified pedorthist is a person certified by the Board for Certification in Pedorthics, or its successor entity, in the design, manufacture, fit, and modification of shoes and related foot orthoses below the anatomical ankle joint as prescribed by a licensed doctor of medicine or a doctor of podiatry for the amelioration of a painful or disabling condition of the foot. "Foot orthosis" includes prosthetic toe fillers or orthoses for use below the ankle.

(e) This Act does not apply to a certified fitter or certified master orthotist who holds a credential issued by the National Community Pharmacists Association if the fitter or master orthotist:

(1) is working within the person's scope of practice as defined by the board; or

(2) provides the following services or devices described by the Health Care Financing Administration's Common Procedure Coding System:

- (A) foam cervical collar;
- (B) thermoplastic foam cervical collar;
- (C) plastic cervical collar;
- (D) rib belt;
- (E) thoracic-lumbar support;
- (F) lumbar-sacral support;
- (G) sacroiliac support;
- (H) ptosis support;
- (I) pendulous abdomen support;
- (J) torso support;
- (K) knee orthosis;
- (L) knee orthosis with stays;
- (M) knee orthosis with joints;
- (N) knee orthosis with condylar pads;
- (O) knee orthosis with joints and condylar pads;
- (P) knee immobilizer;
- (Q) multiligamentous ankle support;
- (R) figure eight shoulder restrainer;
- (S) acromioclavicular support;
- (T) elbow orthosis with stays;
- (U) elbow orthosis with joints;
- (V) wrist splint;
- (W) pneumatic ankle splint;
- (X) pneumatic walking splint;
- (Y) pneumatic full leg splint;
- (Z) pneumatic knee splint;
- (AA) mastectomy bra;
- (BB) mastectomy sleeve;
- (CC) mastectomy form;
- (DD) silicone breast prosthesis;
- (EE) medium weight calf-length stocking;
- (FF) heavy weight calf-length stocking;
- (GG) surgical weight calf-length stocking;
- (HH) medium weight thigh-length stocking;
- (II) heavy weight thigh-length stocking;
- (JJ) surgical weight thigh-length stocking;
- (KK) medium weight full-length stocking;
- (LL) heavy weight full-length stocking;
- (MM) surgical weight full-length stocking;
- (NN) medium weight leotard;
- (OO) surgical weight leotard;
- (PP) custom made compression stocking;
- (QQ) lymphedema sleeve;
- (RR) garter belt;

- (SS) single truss with standard pad;
- (TT) double truss with standard pad;
- (UU) water pad addition to truss; and
- (VV) scrotal pad addition to truss.

Sec. 22. PROHIBITED ACTS. (a) A person may not practice, attempt to practice, or offer to practice prosthetics or orthotics, act as an assistant to a person who practices prosthetics or orthotics, or in any way hold the person out as being able to practice prosthetics or orthotics unless the person holds a license issued by the board under this Act.

(b) A person or the person's employees, agents, or representatives may not use in connection with the person's name or business activities the terms or a combination of the terms or letters described in Section 21(a)(1), indicate orally or in writing, directly or by implication, that a prosthetic or orthotic service is provided or supplied, or extend or provide prosthetic or orthotic services unless the person is a prosthetist or orthotist or an assistant to a prosthetist or orthotist licensed under this Act.

(c) A person licensed under this Act violates this Act if the person violates Section 161.091, Health and Safety Code.

Sec. 23. PROSTHETIST AND ORTHOTIST LICENSE REQUIREMENTS. (a) To obtain a license to practice prosthetics or orthotics in this state, an individual must file a written application with the board on the form provided by the board, pay the nonrefundable application fee prescribed by the board, and:

- (1) be a resident of this state;
- (2) have completed the formal training, including the required hours of classroom education and clinical practice, in an area of study the board by rule determines to be necessary and appropriate;
- (3) have completed a clinical residency in the professional area for which licensure is sought that complies with the standards, guidelines, or procedures established by the board for a clinical residency offered in this state or in another state; and
- (4) have completed and passed all written and practical examinations approved and required by the board.

(b) The requirements for a license established by board rule must include:

- (1) either:
 - (A) a bachelor's degree in orthotics and prosthetics from a college or university educational program recognized and accredited by the Commission on Accreditation of Allied Health Education Programs or from a practitioner educational program having educational standards that are equivalent to or exceed the standards adopted by the Commission on Accreditation of Allied Health Education Programs; or
 - (B) a bachelor's degree and a prosthetic or orthotic certificate from a practitioner educational program recognized and accredited by the Commission on Accreditation of Allied Health Education Programs or from a practitioner educational program having educational standards that are equivalent to or exceed the standards adopted by the Commission on Accreditation of Allied Health Education Programs; and

(2) not less than 1,900 hours of professional clinical residency completed under the direct supervision of a licensed orthotist, licensed prosthetist, or a licensed prosthetist orthotist in the discipline for which licensure is sought.

(c) The board's rules providing requirements for a license must include as an alternative to the requirement under Subsection (b) of this section that an applicant have an associate's degree, including courses in the anatomical, biological, and physical sciences and not less than 4,500 hours of postgraduate clinical experience under the direct supervision of a licensed orthotist, licensed prosthetist, or licensed prosthetist orthotist in the discipline for which licensure is sought. This subsection expires January 1, 2005.

(d) A person may apply for an exemption from the license requirements adopted by the board under this section if the person applies not later than the 181st day after the date the board's initial rules under this Act are finally adopted and published and the person:

(1) is a resident of this state; and

(2) preceding the date of the application:

(A) provided comprehensive prosthetic or orthotic care for not less than three years, including practicing orthotics or prosthetics in this state for the one-year period preceding the application date; or

(B) provided comprehensive prosthetic and orthotic care for not less than six years, including practicing orthotics and prosthetics in this state for the one-year period preceding the application date.

(e) A person may apply for an exemption from the license requirements adopted by the board under this section if the person is a resident of this state who presents evidence satisfactory to the board that the person possesses unique qualifications to practice orthotics, prosthetics, or orthotics and prosthetics.

(f) A person may obtain a license to practice in this state by completing and passing all written and practical examinations approved and required by the board if the person:

(1) applies for the examinations on a form provided by the board not later than the 181st day after the date the board's initial rules under this Act are finally adopted and published;

(2) pays the nonrefundable application fee prescribed by the board; and

(3) provided comprehensive orthotic, prosthetic, or orthotic and prosthetic care in this state for less than the number of years required by Subsection (d) of this section.

(g) The board shall issue a license to a person who is determined to be exempt from the license requirements under Subsection (d) or (e) of this section or who obtains a license under Subsection (f) of this section. Such a license holder is entitled to the same license privileges as if the person met the educational and vocational requirements under Subsection (a) or (b) of this section. The person is subject to the license renewal requirements adopted by the board, except for the academic, clinical training, and examination requirements, which may not be imposed as a condition of the person's license.

Sec. 24. PHARMACISTS. The board shall issue a license to a person who applies for a license and is licensed or regulated by the State Board of Pharmacy and is certified by the National Community Pharmacists Association as a certified fitter or master orthotist. The board shall assess a licensing fee of no more than \$50 to a person licensed under this section.

Sec. 25. PROSTHETIST OR ORTHOTIST ASSISTANT LICENSE. (a) An applicant for a license as a prosthetist assistant or orthotist assistant must file a written application with the board on a form provided by the board and pay the nonrefundable application fee prescribed by the board.

(b) An applicant under this section must present evidence satisfactory to the board that the applicant has completed an educational program, including courses in the anatomical, biological, and physical sciences, and a clinical residency as prescribed and adopted by the board.

(c) An assistant licensed under this section may provide only ancillary patient care services, as defined by the board, in the discipline in which the assistant's supervisor is licensed under this Act.

(d) A person may apply for an exemption from the license requirements adopted by the board under this section if the person applies not later than the 181st day after the date the board's initial rules under this Act are finally adopted and published and if the person is a resident of this state who has practiced within the scope of practice of an assistant, as defined by the board, for three consecutive years in this state.

Sec. 26. PROSTHETIC OR ORTHOTIC TECHNICIAN REGISTRATION. (a) An applicant for registration as a registered prosthetic technician or registered orthotic technician must file a written application with the board on a form provided by the board and pay the nonrefundable application fee prescribed by the board.

(b) An applicant under this section must present evidence satisfactory to the board that the applicant has completed an educational program and laboratory experience as prescribed and adopted by the board.

(c) A person may apply for an exemption from the registration requirements adopted by the board under this section if the person applies not later than the 181st day after the date the board's initial rules under this Act are finally adopted and published and if the person is a resident of this state who has practiced as an orthotic or prosthetic technician for three consecutive years in this state.

Sec. 27. ACCREDITATION OF FACILITIES. (a) The board by rule shall adopt requirements for the accreditation and the renewal of an accreditation of an orthotic or prosthetic facility in which the profession and practice of orthotics or prosthetics is conducted.

(b) If one or more facilities are owned by a person, the board may require only one application for the accreditation of all the person's facilities. Each orthotic or prosthetic facility must meet the requirements prescribed by the board.

(c) An orthotic or prosthetic facility must be under the on-site direction of an orthotist or prosthetist licensed by the board in the discipline for which accreditation is sought.

(d) The rules adopted under this section may not prohibit a licensed individual from practicing in an orthotic or prosthetic facility within the scope of the individual's license.

(e) This section does not apply to a facility licensed under Subtitle B, Title 4, Health and Safety Code.

Sec. 28. ISSUANCE OF LICENSE. (a) The board shall issue a license in prosthetics or orthotics to an applicant who meets the qualifications established under this Act and the requirements adopted by the board as provided by this Act. A license is valid for two years from the date issued and may be renewed before expiration.

(b) The board may issue a license or registration under this Act only to an individual. The board may issue an accreditation only to an orthotic or prosthetic facility.

(c) A license may be granted in either orthotics or prosthetics, or in both, if the person meets the requirements established by the board.

Sec. 29. PROVISIONAL LICENSE. (a) A person practicing comprehensive prosthetic or orthotic patient management who does not meet the requirements of this Act for licensing as a prosthetist or orthotist by October 1, 1998, and is not exempt under this Act, must comply with the requirements of Sections 23(a) and (b) of this Act on or before January 1, 2005.

(b) A person subject to this section may apply for a prosthetist or orthotist provisional license by filing a written application with the board on a form provided by the board and paying a nonrefundable application fee prescribed by the board.

(c) A provisional license may only be issued to an individual who is actively engaged in complying with the educational and clinical licensing requirements of Sections 23(a) and (b) of this Act.

(d) A provisional license may be revoked by the board if the board determines that the provisional license holder is not in compliance with this section.

(e) The educational and clinical training requirements established by board rule for a provisional license must include:

(1) an associate degree, including course work in the anatomical, biological, and physical sciences; and

(2) not less than 4,500 hours of postgraduate clinical residency completed under the direct supervision of a licensed orthotist or a licensed prosthetist in the discipline for which a provisional license is sought.

(f) A provisional license is valid for two years from the date issued and may be renewed with documentation as required by board rule.

(g) This section expires January 1, 2005.

Sec. 30. TEMPORARY LICENSE. (a) The board may issue a temporary license to an individual who:

(1) has recently become a resident of this state;

(2) has applied for licensing as an orthotist, prosthetist, or both; and

(3) has;

(A) practiced the profession of orthotics regularly since January 1, 1996; or

(B) been licensed by the state in which the person formerly resided that has licensing requirements that are equal to or exceed the requirements of this Act.

(b) A temporary license is valid for one year from the date issued. A temporary license may be renewed for not more than one additional year if the applicant presents to the board sufficient evidence of good cause for renewal.

Sec. 31. STUDENT REGISTRATION. (a) The board may issue a student registration certificate to an individual who:

(1) holds either:

(A) a bachelor's degree in orthotics and prosthetics conferred by a college or university educational program recognized and accredited by the Commission on Accreditation of Allied Health Education Programs or from a practitioner educational program having educational standards that are equivalent to or exceed the standards adopted by the Commission on Accreditation of Allied Health Education Programs; or

(B) a bachelor's degree and a prosthetic or orthotic certificate from a practitioner educational program recognized and accredited by the Commission on Accreditation of Allied Health Education Programs or from an educational program having educational standards that are equivalent to or exceed the standards adopted by the Commission on Accreditation of Allied Health Education Programs; and

(2) is working toward fulfillment of the requirements for licensing as a prosthetist, orthotist, or prosthetist orthotist.

(b) The board may issue a student registration certificate to an individual who holds, as an alternative to the qualifications required by Subsection (a)(1)(B) of this section, an associate's degree, including course work in the anatomical, biological, and physical sciences. This subsection expires January 1, 2005.

(c) A student registrant may work only under the direct supervision of a licensed orthotist, licensed prosthetist, or licensed prosthetist orthotist who is responsible for the acts of the student registrant and is licensed in the discipline of the clinical residency.

(d) A student registration certificate is valid for two years from the date issued and may be renewed once for an additional two years.

Sec. 32. EXAMINATION EXEMPTION. The board may accept as a substitute for the examination requirement proof that the applicant for the exemption holds a current license in a state that has licensing requirements that are equal to or exceed the requirements of this Act.

Sec. 33. CONTINUING EDUCATION. (a) An applicant for renewal of a license shall submit to the board evidence of satisfactory completion of the continuing education requirements required by the board.

(b) The board shall notify each license holder of the holder's failure to comply with the board's continuing education requirements and shall notify the license holder that if the holder does not obtain the required continuing education before the expiration of three months after the date the notice was given, the board may take any action authorized by this Act concerning the suspension or revocation of the holder's license.

Sec. 34. DISCIPLINARY PROVISIONS. (a) After notice and opportunity for a hearing, the board may revoke, suspend, or refuse to renew a license issued under this Act on a finding that:

(1) the license was obtained by fraud, misrepresentation, or concealment of a material fact;

(2) the person engaged in fraud or deceit in connection with services provided by the person;

(3) the person engaged in unprofessional or unethical conduct;

(4) the person engaged in gross negligence or malpractice; or

(5) the person violated this Act or a rule adopted under this Act.

(b) A license revoked under Subsection (a) of this section may be reinstated after the first anniversary of the date of the revocation by the board on terms the board determines to be necessary.

Sec. 35. CIVIL PENALTY. (a) A person who violates this Act is subject to a civil penalty of \$200 for the first violation and \$500 for each subsequent violation. At the request of the board, the attorney general shall bring an action in the name of the state to collect a civil penalty under this section.

(b) Each day a violation of Section 22 of this Act continues is a separate violation for the purpose of this section.

SECTION 2. Section 232.002, Family Code, is amended to read as follows:

Sec. 232.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER. The following state agencies are licensing authorities subject to this subchapter:

- (1) Department of Agriculture;
- (2) Texas Commission on Alcohol and Drug Abuse;
- (3) Texas Alcoholic Beverage Commission;
- (4) Texas Appraiser Licensing and Certification Board;
- (5) Texas Board of Architectural Examiners;
- (6) State Board of Barber Examiners;
- (7) Texas Board of Chiropractic Examiners;
- (8) Comptroller of Public Accounts;
- (9) Texas Cosmetology Commission;
- (10) Court Reporters Certification Board;
- (11) State Board of Dental Examiners, if the 74th Legislature, at its regular session, enacts legislation that becomes law authorizing a state agency to regulate the practice of dentistry;
- (12) Texas State Board of Examiners of Dietitians;
- (13) Texas Funeral Service Commission;
- (14) Texas Department of Health;
- (15) Texas Board of Professional Land Surveying;
- (16) Texas Department of Licensing and Regulation;
- (17) Texas State Board of Examiners of Marriage and Family Therapists;
- (18) Texas State Board of Medical Examiners;
- (19) Midwifery Board;
- (20) Texas Natural Resource Conservation Commission;

- (21) Board of Nurse Examiners;
- (22) Texas Board of Nursing Facility Administrators;
- (23) Texas Board of Occupational Therapy Examiners;
- (24) Texas Optometry Board;
- (25) Parks and Wildlife Department;
- (26) Texas State Board of Examiners of Perfusionists;
- (27) Texas State Board of Pharmacy;
- (28) Texas Board of Physical Therapy Examiners;
- (29) Texas State Board of Plumbing Examiners;
- (30) Texas State Board of Podiatry Examiners;
- (31) Polygraph Examiners Board;
- (32) Texas Board of Private Investigators and Private Security Agencies;
- (33) Texas State Board of Examiners of Professional Counselors;
- (34) State Board of Registration for Professional Engineers;
- (35) Department of Protective and Regulatory Services;
- (36) Texas State Board of Examiners of Psychologists;
- (37) Texas State Board of Public Accountancy;
- (38) Department of Public Safety of the State of Texas;
- (39) Public Utility Commission of Texas;
- (40) Railroad Commission of Texas;
- (41) Texas Real Estate Commission;
- (42) State Bar of Texas;
- (43) Texas State Board of Social Worker Examiners;
- (44) State Board of Examiners for Speech-Language Pathology and Audiology;
- (45) Texas Structural Pest Control Board;
- (46) Board of Tax Professional Examiners;
- (47) Secretary of State;
- (48) Supreme Court of Texas;
- (49) Texas Transportation Commission;
- (50) State Board of Veterinary Medical Examiners;
- (51) Board of Vocational Nurse Examiners;
- (52) Texas Ethics Commission;
- (53) Advisory Board of Athletic Trainers;
- (54) State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments;
- (55) Texas Board of Licensure for Professional Medical Physicists; ~~[and]~~
- (56) Texas Department of Insurance; ~~and~~
- (57) Texas Board of Orthotics and Prosthetics.

SECTION 3. (a) In making the initial appointments to the Texas Board of Orthotics and Prosthetics, the governor shall, not later than October 1, 1997, appoint:

- (1) two members for terms expiring February 1, 1999;
- (2) two members for terms expiring February 1, 2001; and
- (3) two members for terms expiring February 1, 2003.

(b) The initial members of the board appointed under Subsection (a) of this section shall have the qualifications required by this subsection. One member must be an orthotist certified by the American Board for Certification in Orthotics and Prosthetics, Inc., be a resident of this state, and have practiced orthotics for the five years preceding the date of appointment. Two members must be orthotists who hold a credential issued by the Board for Orthotist Certification, are residents of this state, and have practiced orthotics for the five years preceding the date of appointment. One member must be a prosthetist orthotist or prosthetist certified by the American Board for Certification in Orthotics and Prosthetics, Inc., be a resident of this state, and have practiced prosthetics or orthotics for the five years preceding the date of appointment. One member must be a representative of the public who uses an orthosis. One member must be a representative of the public who uses a prosthesis.

(c) A member appointed under this section to a place on the board required to be held by a person licensed under Article 8920, Revised Statutes, as added by this Act, may continue to serve without having the appropriate license until February 1, 1999, by which date the person must obtain the required license.

(d) The board shall adopt rules under Article 8920, Revised Statutes, as added by this Act, not later than October 1, 1998.

SECTION 4. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1997.

(b) Sections 22 and 35, Article 8920, Revised Statutes, as added by this Act, take effect October 1, 1998.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

Amend CSSB 291 by deleting Subsection (e) and replacing it with a new Subsection (e) to read as follows:

(e) A pharmacist licensed by the Texas State Board of Pharmacy or a person who is working under the direct supervision of a pharmacist may practice orthotics. Nothing in this Act shall preclude a pharmacist from being reimbursed by a state funded program for providing these services.

And amend CSSB 291 by striking Section 24, and renumber the following sections as appropriate.

Floor Amendment No. 2

Amend CSSB 291 as follows:

On page 7, lines 3 and 4, place a period after the word "year," and delete the remaining text that reads "unless the absence is excused by majority vote of the board."

Floor Amendment No. 3

Amend CSSB 291 as follows:

(1) On page 13, line 26, after "state" strike "guidelines", and substitute

the words "laws, rules and regulations and instructions promulgated directly from those laws, rules and regulations".

(2) On page 14, line 2, after "state" strike "guidelines", and substitute the words "laws, rules and regulations and instructions promulgated directly from those laws, rules and regulations".

The amendments were read.

On motion of Senator Patterson, the Senate concurred in the House amendments to **SB 291** by a viva voce vote.

SENATE BILL 1246 WITH HOUSE AMENDMENTS

Senator Madla called **SB 1246** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 1246** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the establishment of a statewide rural health care system.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Insurance Code is amended by adding Chapter 20C to read as follows:

CHAPTER 20C. STATEWIDE RURAL HEALTH CARE SYSTEM

Art. 20C.01. SHORT TITLE. This chapter may be cited as the Statewide Rural Health Care System Act.

Art. 20C.02. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the system.

(2) "Enrollee" means an individual entitled to receive health care services through a health care plan arranged for or provided by the system.

(3) "Health care services" has the meaning assigned by Section 2, Texas Health Maintenance Organization Act (Article 20A.02, Vernon's Texas Insurance Code).

(4) "Hospital provider" means a county hospital, county hospital authority, hospital district, municipal hospital, or municipal hospital authority.

(5) "Local health care provider" means:

(A) a person licensed, registered, or certified as a health care practitioner in this state who resides in or practices in a rural area in which the person provides health care services; or

(B) a general or specialty hospital that is not a hospital provider under this chapter.

(6) "Participating provider" means a hospital provider that participates in the system.

(7) "Person" means an individual, professional association, professional corporation, partnership, limited liability corporation, limited liability partnership, or nonprofit corporation, including a nonprofit corporation created under Section 5.01(a), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes).

(8) "Rural area" means:

(A) a county with a population of 50,000 or less;

(B) an area that is not delineated as an urbanized area by the federal census bureau; or

(C) any other area designated as rural by rules adopted by the commissioner.

(9) "System" means the statewide rural health care system established by this chapter.

(10) "Territorial jurisdiction" means the geographical area in which a participating provider is obligated by law to provide health care services.

Art. 20C.03. ESTABLISHMENT OF SYSTEM. The statewide rural health care system is established to arrange for or provide health care services on a prepaid basis to enrollees who reside in rural areas.

Art. 20C.04. DESIGNATION AS SYSTEM; QUALIFICATIONS.

(a) The commissioner shall designate as the system one organization created under Article 20C.05 of this code. Except as provided by Subsection (b) of this article, to be eligible for designation as the system, the organization must meet each requirement imposed by the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code), as if the organization were a person under the Act.

(b) The system shall meet all reserve requirements required by the commissioner. The system may fulfill the requirements of this subsection through the purchase of reinsurance from insurance companies approved for that purpose by the commissioner.

Art. 20C.05. ORGANIZATION OF SYSTEM; APPLICATION OF OTHER LAWS. (a) The system must be:

(1) a corporation organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes); and

(2) composed of a combination of two or more hospital providers that are members of the corporation and that are located in a rural area.

(b) The system is:

(1) a unit of local government that is a governmental unit for purposes of Chapter 101, Civil Practice and Remedies Code; and

(2) a local government for purposes of Chapter 102, Civil Practice and Remedies Code.

(c) The system may enter into interlocal cooperation contracts under Chapter 791, Government Code, and is a local government for purposes of that chapter.

Art. 20C.06. BOARD. (a) The system is governed by a board of directors composed of 18 members. Notwithstanding the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), the board of directors is selected as provided by this chapter.

(b) The participating providers shall appoint as representatives of the participating providers six directors selected in the manner provided by Article 20C.10 of this code.

(c) The governor shall appoint six directors from persons residing in the territorial jurisdictions of the participating providers, including:

- (1) two persons who represent employers;
- (2) two persons who are local government officials; and
- (3) two persons who are consumers of health care services.

(d) In addition to the directors appointed under Subsection (c) of this article, the governor shall appoint six directors from among licensed physicians who reside and practice in the territorial jurisdictions of the participating providers. At least three of the physicians appointed under this subsection must perform as their professional practice the general practice of medicine.

(e) Directors appointed under Subsection (c) or (d) of this article shall be appointed in such a manner as to represent the territorial jurisdictions of all participating providers.

Art. 20C.07. TERMS; VACANCIES. (a) The members of the board serve staggered six-year terms, with the terms of six members expiring February 1 of each odd-numbered year.

(b) A member of the board may not serve consecutive terms. A person who has served as a member and has left the board at the expiration of the person's term is eligible for consideration for appointment to the board for a nonconsecutive term.

(c) A vacancy on the board is filled for the remainder of the unexpired term by appointment by the same entity that appointed the director vacating the position.

Art. 20C.08. ADMINISTRATION BY BOARD; COMMITTEES. (a) The board shall administer the system and shall adopt policies and procedures for the system that are consistent with the purposes of this chapter. The board may elect officers as it considers appropriate.

(b) The board may appoint an executive committee as determined by the board to be useful in conducting the business of the board. The board may delegate to the executive committee any responsibility considered reasonable by the board.

(c) An executive committee appointed under this article must be composed of six members, as follows:

- (1) two representatives of the participating providers;
- (2) two persons who are community representatives, including employers, local government officials, or consumers of health care services; and
- (3) two physicians who meet the requirements adopted under Article 20C.06(d) of this code.

(d) On a majority vote, the board may:

- (1) contract for administrative services; or
- (2) hire an executive director, consultants, attorneys and other professionals, and other staff as necessary to implement the duties of the system.

(e) If the board hires an executive director for the system, the board shall delegate to the executive director the authority to hire staff for the system and may delegate to the executive director other duties determined to be appropriate by the board.

(f) The board shall appoint an advisory committee composed of:

(1) hospital administrators who represent nonprofit and investor-owned facilities;

(2) representatives of hospital districts located in urban areas;

(3) representatives of health care teaching facilities;

(4) representatives of health care specialty facilities;

(5) representatives of medical residency programs in family practice; and

(6) representatives of rural health clinics, federally qualified health centers, and ambulatory surgical centers.

(g) In addition to the advisory committee appointed under Subsection (f) of this article, the board may appoint other advisory committees as determined to be appropriate by the board.

(h) A member of an advisory committee appointed under this article is not entitled to compensation for service on the committee.

Art. 20C.09. MEETINGS; RECORD. (a) The board shall adopt rules for the holding of regular and special meetings.

(b) Meetings of the board are open to the public in accordance with Chapter 551, Government Code. This subsection does not require the board to conduct an open meeting to deliberate:

(1) pricing or financial planning information relating to a bid or negotiation for arranging or providing services or product lines to another person if disclosure of the information would give the advantage to competitors;

(2) information relating to a proposed new service, product line, or marketing strategy;

(3) patient information made confidential under Section 5.08, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), or Subchapter G, Chapter 241, Health and Safety Code; or

(4) information relating to the credentialing of physicians or peer review made confidential under Section 5.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), or Subchapter G, Chapter 241, Health and Safety Code.

(c) The board shall keep a record of its proceedings in accordance with Chapter 551, Government Code.

Art. 20C.10. LIMITATION ON AUTHORITY OF PARTICIPATING PROVIDERS; EFFECT OF SALE OR DISSOLUTION. (a) The powers of the participating providers are limited to:

(1) the election, by a majority vote of the governing bodies of the participating providers, of the six members of the board of directors of the system to be appointed by the combined participating providers under Article 20C.06(b) of this code;

(2) the authorization by a two-thirds vote of the sale of the system or substantially all of the assets of the system; and

(3) the removal by a two-thirds vote of any member of the board who was appointed by the participating providers.

(b) Except as otherwise provided by law, in the event of the sale or dissolution of the system or substantially all of the assets of the system, the net revenue shall be redistributed on an equal basis to the participating providers after payment of any outstanding debts, liabilities, or other obligations incurred by the system.

Art. 20C.11. PROVISION OF ADMINISTRATIVE SERVICES. (a) The board may adopt rules regarding the provision of administrative services by the system.

(b) The system may enter into contracts or joint ventures to provide administrative services under this chapter.

(c) The system may enter into intergovernmental and interlocal agreements.

(d) The system may provide technical assistance and management services to local health care providers as necessary to deliver health care services.

Art. 20C.12. PROVISION OF HEALTH CARE SERVICES. (a) The board may adopt rules to regulate the provision of health care services by the system.

(b) The system shall contract with or otherwise arrange for local health care providers to deliver health care services to enrollees residing in the rural areas of the territorial jurisdiction of the participants. If those local health care providers are unable to provide the type and quality of services needed by the enrollees, the system may contract with health care practitioners who are not local health care providers.

(c) In contracting with or otherwise arranging for local health care providers to deliver health care services to rural enrollees, the system may contract only with local health care provider networks that are composed of not more than 19 counties.

Art. 20C.13. GIFTS AND GRANTS. The system may accept gifts and grants of money, personal property, and real property to use in the provision of the system's programs and services.

Art. 20C.14. MANDATED PROVIDER; EXCEPTION. (a) The state shall award to the system at least one of any state managed care contracts awarded to provide health care services to beneficiaries of the Texas Medical Assistance Program under Chapter 32, Human Resources Code, in the rural areas within the territorial jurisdiction of the participating providers.

(b) This article does not apply to a contract that expands coverage of the Texas Medical Assistance Program under Chapter 32, Human Resources Code, to certain children that is implemented during the 1997-1998 state fiscal biennium.

(c) As a requirement of participation in any state contract, the system must satisfactorily address the qualifications for arranging to provide health care services to beneficiaries of certain governmental health care programs as delineated in the contractor's request for proposal, including:

(1) readiness reviews and adequacy of credentialing, medical management, quality assurance, claims payment, information management, provider and patient education, and complaint and grievance procedures; and

(2) adequacy of physician and provider networks, including such factors as diversity, geographic accessibility, inclusion of physicians and other providers that have furnished a significant amount of Medicaid or charity care to beneficiaries, and tertiary and subspecialty services.

(d) The system shall be reimbursed by the Medicaid contracting agency at the state-defined capitation rate for each service area in which the system operates.

(e) It is not a condition of participation for the system to accept from the Medicaid contracting agency a capitation rate which is lower than the state-defined capitation rate for each service area in which the system operates.

Art. 20C.15. RULES. The commissioner shall adopt rules as necessary to implement this chapter.

SECTION 2. Subsection (l), Section 2, Texas Health Maintenance Organization Act (Article 20A.02, Vernon's Texas Insurance Code), is amended to read as follows:

(l) "Person" means any natural or artificial person, including, but not limited to, individuals, partnerships, associations, organizations, trusts, hospital districts, limited liability companies, limited liability partnerships, ~~[or]~~ corporations, or the rural community health care system under Chapter 20C, Insurance Code.

SECTION 3. In appointing the initial members of the board of directors of the statewide rural health care system established under Chapter 20C, Insurance Code, as added by this Act:

(1) the participating providers shall designate two members for terms expiring February 1, 1999, two members for terms expiring February 1, 2001, and two members for terms expiring February 1, 2003; and

(2) of the members appointed under Subsection (c) or (d), Article 20C.06, Insurance Code, as added by this Act, the governor shall designate two for terms expiring February 1, 1999, two for terms expiring February 1, 2001, and two for terms expiring February 1, 2003.

SECTION 4. (a) Except as provided by Subsections (b) and (c) of this section, this Act takes effect September 1, 1997.

(b) The Commissioner of Insurance shall adopt rules as necessary to implement Chapter 20C, Insurance Code, as added by this Act, not later than January 1, 1998.

(c) The statewide rural health care system established under Chapter 20C, Insurance Code, as added by this Act, shall begin offering health care services under that chapter not later than March 1, 1998, unless the system determines that it is not prepared to fulfill its regulatory or contractual obligations by that date.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

Amend CSSB 1246 as follows:

(1) In Article 20C.14(a), Insurance Code, as added by SECTION 1 of the bill (page 9, line 17, House Committee Printing), strike "The state" and substitute "To the extent consistent with federal law, the state".

(2) In Article 20C.14(b), Insurance Code, as added by SECTION 1 of the bill (page 9, line 26, House Committee Printing), strike "state fiscal biennium," and substitute "state fiscal biennium, except that the system shall receive a subcontract from the funding entity to provide services to those children if the system elects to receive a subcontract not later than November 1, 1997, the system provides the state share of matching funds for the entire population covered by the subcontract, and the subcontract does not cover an area that is included in the statutory territorial jurisdiction of a hospital district. If the system elects not to receive a subcontract or to provide the state share of matching funds, then any entity that is selected by the state Medicaid contracting entity to provide health care to those children shall use existing local health care providers and hospital providers in establishing its provider network."

(3) In Article 20C.14, Insurance Code, as added by SECTION 1 of the bill (page 10, between lines 20 and 21, House Committee Printing), insert a new Subsection (f) to read as follows:

"(f) The state retains the right to cancel a contract awarded under this article if the system is sold or dissolved."

Floor Amendment No. 1 on Third Reading

Amend CSSB 1246, on third reading, as follows:

(1) In Article 20C.14(a), Insurance Code, as added by SECTION 1 of the bill (page 9, line 17, House Committee Printing), strike "The state" and substitute "To the extent consistent with federal law, the state".

(2) In Article 20C.14(b), Insurance Code, as added by SECTION 1 of the bill (page 9, line 26, House Committee Printing), strike "state fiscal biennium," and substitute "state fiscal biennium, except that the system shall receive a subcontract from the funding entity to provide services to those children if the system elects to receive a subcontract not later than November 1, 1997, the system provides the state share of matching funds for the entire population covered by the subcontract, and the subcontract does not cover an area that is included in the statutory territorial jurisdiction of a hospital district. If the system elects not to receive a subcontract or to provide the state share of matching funds, then any entity that is selected by the state Medicaid contracting entity to provide health care to those children shall use local health care providers and hospital providers in establishing its provider network."

(3) In Article 20C.14, Insurance Code, as added by SECTION 1 of the bill (page 10, between lines 20 and 21, House Committee Printing), insert a new Subsection (f) to read as follows:

"(f) The state retains the right to cancel a contract awarded under this article if the system is sold or dissolved."

The amendments were read.

On motion of Senator Madla, the Senate concurred in the House amendments to **SB 1246** by a viva voce vote.

SENATE BILL 81 WITH HOUSE AMENDMENT

Senator Ellis called **SB 81** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

Floor Amendment No. 1 on Third Reading

Amend **SB 81**, on third reading, by inserting the following appropriately numbered section and renumbering the sections of the bill accordingly:

SECTION ____ . Section 52.027(i), Family Code, is amended to read as follows:

- (i) In this section, "child" means a person who:
- (1) is at least 10 years of age and younger than 17 ~~[18]~~ years of age and who:
 - ~~[(1)]~~ is charged with or convicted of a traffic offense; or
 - (2) is at least 10 years of age and younger than 18 years of age

and who:

(A) is charged with or convicted of an offense, other than public intoxication, punishable by fine only as a result of an act committed before becoming 17 years of age;

(B) ~~[(2)]~~ is a status offender and was taken into custody as a status offender for conduct engaged in before becoming 17 years of age; or

(C) ~~[(3)]~~ is a nonoffender and became a nonoffender before becoming 17 years of age.

The amendment was read.

On motion of Senator Ellis, the Senate concurred in the House amendment to **SB 81** by a viva voce vote.

SENATE BILL 337 WITH HOUSE AMENDMENT

Senator West called **SB 337** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

Amendment No. 1

Amend **SB 337** as engrossed as follows:

1. on page 1, line 8, delete the added language "determine whether" and restore the stricken word "give"; and,
2. on page 1, line 9, delete the added language "may have"; and,
3. on page 1, line 12 insert "106.03," between "101.63," and "or"; and,
4. delete the following sentence on page 1, line 19-21:

"The commission shall adopt rules addressing when suspension may be imposed without the opportunity to pay a civil penalty."

The amendment was read.

On motion of Senator West, the Senate concurred in the House amendment to **SB 337** by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 1228

Senator Brown called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1228** and moved that the request be granted.

The motion prevailed.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 1228** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brown, Chair; Lucio, Barrientos, Haywood, and Truan.

SENATE BILL 168 WITH HOUSE AMENDMENTS

Senator Haywood called **SB 168** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 168** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the distribution and use of performance incentives for public school principals.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 21.357, Education Code, is amended to read as follows:

Sec. 21.357. PRINCIPAL PERFORMANCE INCENTIVES. (a) The commissioner may ~~shall~~ design an objective system to evaluate principals that:

(1) is based on types of information available as of January 1, 1995, through the Public Education Information Management System (PEIMS) and the state's public school accountability system;

(2) focuses on gain at a principal's campus and includes a statistical analysis comparing current campus performance to previous performance; and

(3) does not include subjective items.

(b) ~~(c)~~ From funds appropriated for that purpose, the commissioner may award performance incentives to principals identified through the evaluation system as high-performing. Based on available appropriations, for each fiscal year, a performance incentive may not exceed:

- (1) \$5,000, for a principal ranked in the top quartile; or
- (2) \$2,500, for a principal ranked in the second quartile.

(c) A performance incentive awarded to a principal under this section must be distributed to the principal's school and used in the manner determined by the campus-level committee established under Section 11.253 in accordance with the requirements of Section 39.094(a).

(d) This section expires August 31, 2001.

SECTION 2. The unexpended and unobligated balance of any money appropriated for the principal incentive program created under Section 21.357, Education Code, for the fiscal year ending August 31, 1997, shall be used by the Texas Education Agency to fund successful school awards under Subchapter E, Chapter 39, Education Code.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Floor Amendment No. 1

Amend CSSB 168 as follows:

(1) Strike SECTION 2 of the bill (House committee report page 2, lines 9-14).

(2) In SECTION 3 of the bill (House committee report page 2, line 15), strike "3" and substitute "2".

Floor Amendment No. 2

Amend CSSB 168, as follows:

(1) Strike "may" on page 1, line 8 and remove the strikeout on "shall".

(2) On page 2, add a new section (d) as follows:

(d) The commissioner shall develop a study on establishing an incentive grant program for all classes of educators to be reported to the legislature no later than December 1, 1998. The study shall focus on developing objective methods for the issuance of grants in the areas of student performance, continuing education, and professional duties performed by teachers in addition to classroom duties.

(3) Strike line 8.

The amendments were read.

On motion of Senator Haywood, the Senate concurred in the House amendments to SB 168 by a viva voce vote.

SENATE BILL 1262 WITH HOUSE AMENDMENT

Senator Ellis called SB 1262 from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

Amendment No. 1

Amend **SB 1262** by inserting Section 2 and renumbering the subsequent sections appropriately.

SECTION 2. Subchapter A, Chapter 302, Labor Code, is amended by adding Section 302.004 to read as follows:

Sec. 302.004. In providing job training and employment services and child care to eligible persons, the Commission, notwithstanding the provisions in this chapter or other law, may establish a need-based formula to allocate funds available under the Personal Responsibility and Work Opportunity Reconciliation Act for job training and employment services and child care to local workforce development areas so as to ensure compliance with federal participation rates and requirements, and full utilization of the funding.

The amendment was read.

On motion of Senator Ellis, the Senate concurred in the House amendment to **SB 1262** by a viva voce vote.

BILLS AND RESOLUTION SIGNED

The President Pro Tempore announced the signing of the following enrolled bills and resolution in the presence of the Senate after the captions had been read:

SB 11, SB 15, SB 16, SB 29, SB 48, SB 57, SB 58, SB 60, SB 68, SB 224, SB 397, SB 467, SB 531, SB 550, SB 612, SB 660, SB 758, SB 759, SB 899, SB 913, SB 938, SB 961, SB 1041, SB 1050, SB 1297, SB 1316, SB 1478, SB 1579, SB 1594, SB 1676, SB 1728, SB 1805, SB 1811, SB 1827, SB 1835, SB 1925, SB 1936, SB 1938, SCR 101

SENATE BILL 644 WITH HOUSE AMENDMENT

Senator Armbrister called **SB 644** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

Amendment No. 1

Amend **SB 644** as follows:

(1) On page 1, line 7, after "stretcher", insert "and that holds itself out as an air ambulance service";

(2) On page 1, line 22, following the period, insert:

"This subsection does not prohibit an air ambulance company with multiple locations from listing those locations in advertising, provided that the air ambulance company meets all the provisions of this Act."

(3) On page 1, after line 22, insert new subsections (e) and (f) to read as follows:

(e) An air ambulance company that is not located in this state and that advertises within this state must have at least one physical location in this state.

(f) This section does not require an air transportation provider to be licensed if, in addition to the company's normal air transportation service, the air transportation company provides only voluntary, mercy-flight transportation at the company's own expense.

The amendment was read.

On motion of Senator Armbrister, the Senate concurred in the House amendment to **SB 644** by a viva voce vote.

SENATE BILL 228 WITH HOUSE AMENDMENT

Senator Armbrister called **SB 228** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 228** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the creation of the offense of trademark counterfeiting.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. (a) The legislature finds and declares that the counterfeiting of legitimate goods and services:

- (1) has been connected with organized crime;
- (2) poses health and safety threats to Texas consumers;
- (3) eliminates Texas jobs;
- (4) results in economic disruption to legitimate businesses located in Texas;
- (5) is a multimillion dollar drain on the Texas economy; and
- (6) deprives legitimate intellectual property owners of substantial revenue and consumer goodwill.

(b) To protect the residents and businesses of Texas, the legislature finds it necessary to take appropriate action through this Act to:

- (1) remove counterfeit goods, including parts, from the channels of commerce; and
- (2) prevent the manufacture, sale, and distribution of counterfeit goods or the offer of counterfeit services through counterfeit service marks.

SECTION 2. Subchapter B, Chapter 32, Penal Code, is amended by adding Section 32.23 to read as follows:

Sec. 32.23. TRADEMARK COUNTERFEITING. (a) In this section:

(1) "Counterfeit mark" means a mark that is identical to or substantially indistinguishable from a protected mark the use or production of which is not authorized by the owner of the protected mark.

(2) "Identification mark" means a data plate, serial number, or part identification number.

(3) "Protected mark" means a trademark or service mark or an identification mark that is:

(A) registered with the secretary of state;
(B) registered on the principal register of the United States Patent and Trademark Office;

(C) registered under the laws of another state; or
(D) protected by Section 16.30, Business & Commerce Code, or by 36 U.S.C. Section 371 et seq.

(4) "Retail value" means the actor's regular selling price for a counterfeit mark or an item or service that bears or is identified by a counterfeit mark, except that if an item bearing a counterfeit mark is a component of a finished product, the retail value means the actor's regular selling price of the finished product on or in which the component is used, distributed, or sold.

(5) "Service mark" has the meaning assigned by Section 16.01, Business & Commerce Code.

(6) "Trademark" has the meaning assigned by Section 16.01, Business & Commerce Code.

(b) A person commits an offense if the person intentionally manufactures, displays, advertises, distributes, offers for sale, sells, or possesses with intent to sell or distribute a counterfeit mark or an item or service that:

(1) bears or is identified by a counterfeit mark; or
(2) the person knows or should have known bears or is identified by a counterfeit mark.

(c) A state or federal certificate of registration of intellectual property is prima facie evidence of the facts stated in the certificate.

(d) For the purposes of Subsection (e), when items or services are the subject of counterfeiting in violation of this section pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense and the retail value of the items or services aggregated in determining the grade of offense.

(e) An offense under this section is a:

(1) Class C misdemeanor if the retail value of the item or service is less than \$20;

(2) Class B misdemeanor if the retail value of the item or service is \$20 or more but less than \$500;

(3) Class A misdemeanor if the retail value of the item or service is \$500 or more but less than \$1,500;

(4) state jail felony if the retail value of the item or service is \$1,500 or more but less than \$20,000;

(5) felony of the third degree if the retail value of the item or service is \$20,000 or more but less than \$100,000;

(6) felony of the second degree if the retail value of the item or service is \$100,000 or more but less than \$200,000; or

(7) felony of the first degree if the retail value of the item or service is \$200,000 or more.

SECTION 3. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of

this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 1997.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Armbrister moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 228** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate on the bill: Senators Armbrister, Chair; Cain, Lucio, Gallegos, and Truan.

SENATE BILL 1739 WITH HOUSE AMENDMENT

Senator Armbrister called **SB 1739** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 1739** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the listing on an ad valorem tax appraisal roll of possessory interests in certain property used in the operation or development of a port or waterway or in aid of navigation-related commerce.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 25.07(b), Tax Code, is amended to read as follows:

(b) Except as provided by Subsections (b) and (c) of Section 11.11 of this code, a leasehold or other possessory interest in exempt property may not be listed if:

- (1) the property is permanent university fund land;
- (2) the property is county public school fund agricultural land;
- (3) the property is a part of a public transportation facility owned by an incorporated city or town and:

(A) is an airport passenger terminal building or a building used primarily for maintenance of aircraft or other aircraft services, for aircraft equipment storage, or for air cargo;

(B) is an airport fueling system facility;

(C) is in a foreign-trade zone:

(i) that has been granted to a joint airport board under Chapter 129, Acts of the 65th Legislature, Regular Session, 1977 (Article 1446.8, Vernon's Texas Civil Statutes);

(ii) the area of which in the portion of the zone located in the airport operated by the joint airport board does not exceed 2,500 acres; and

(iii) that is established and operating pursuant to federal law; or

(D)(i) is in a foreign trade zone established pursuant to federal law after June 1, 1991, which operates pursuant to federal law;

(ii) is contiguous to or has access via a taxiway to an airport located in two counties, one of which has a population of 500,000 or more according to the federal decennial census most recently preceding the establishment of the foreign trade zone; and

(iii) is owned, directly or through a corporation organized under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), by the same incorporated city or town which owns the airport;

(4) the interest is in a part of a park, market, fairground, or similar public facility that is owned by an incorporated city or town;

(5) the interest involves only the right to use the property for grazing or other agricultural purposes; ~~or~~

(6) the property is owned by the Texas National Research Laboratory Commission or by a corporation formed by the Texas National Research Laboratory Commission under Section 465.008(g), Government Code, and is used or is useful in connection with an eligible undertaking as defined by Section 465.021, Government Code; or

(7) the property is:

(A) owned by a municipality, a public port, or a navigation district created or operating under Section 59, Article XVI, Texas Constitution, or under a statute enacted under Section 59, Article XVI, Texas Constitution; and

(B) used as an aid or facility incidental to or useful in the operation or development of a port or waterway or in aid of navigation-related commerce.

SECTION 2. This Act takes effect January 1, 1998.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Armbrister, the Senate concurred in the House amendment to **SB 1739** by a viva voce vote.

SENATE BILL 141 WITH HOUSE AMENDMENT

Senator Cain called **SB 141** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 141** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the power of a county to seize and sell abandoned real property for delinquent ad valorem taxes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter E. Chapter 33, Tax Code, is amended to read as follows:

SUBCHAPTER E. SEIZURE OF REAL PROPERTY

Sec. 33.91. PROPERTY SUBJECT TO SEIZURE BY MUNICIPALITY.

(a) After notice has been provided to the person, [A] a person's real property is subject to seizure by a municipality for the payment of delinquent ad valorem taxes, penalties, and interest the person owes on the property and the amount secured by a municipal health or safety lien on the property if:

(1) the property:

(A) is in a municipality;

(B) is less than one acre; and

(C) has been abandoned, unused, and vacant for at least one year;

(2) the taxes on the property are delinquent for:

(A) each of the preceding five years; or

(B) each of the preceding three years if a lien on the property has been created on the property in favor of the municipality for the cost of remedying a health or safety hazard on the property; and

(3) the tax collector of the municipality determines that seizure of the property under this subchapter for the payment of the delinquent taxes, penalties, and interest, and of a municipal health and safety lien on the property, would be in the best interest of the municipality and the other taxing units after determining that the sum of all outstanding tax and municipal claims against the property plus the estimated costs of a standard judicial foreclosure exceed the anticipated proceeds from a tax sale.

(b) The seizure and sale may not be set aside or voided because of any error in determination.

Sec. 33.911. PROPERTY SUBJECT TO SEIZURE BY COUNTY.

(a) After notice has been provided to the person, [A] a person's real property is subject to seizure by a county for the payment of delinquent ad valorem taxes, penalties, and interest the person owes on the property if:

(1) the property:

(A) is in the county;

(B) is not in a municipality; and

(C) has been abandoned, unused, and vacant for at least one year;

(2) the taxes on the property are delinquent for each of the preceding five years; and

(3) the county tax assessor-collector determines that seizure of the property under this subchapter for the payment of the delinquent taxes, penalties, and interest would be in the best interest of the county and the other taxing units after determining that the sum of all outstanding tax and county claims against the property plus the estimated costs of a standard judicial foreclosure exceed the anticipated proceeds from a tax sale.

(b) The seizure and sale may not be set aside or voided because of any error in determination.

Sec. 33.912. The person is considered to have been provided the notice required by Sections 33.91 and 33.911 if by affidavit or otherwise the collector shows that the assessor for the municipality or county mailed the person each bill for municipal or county taxes required to be sent the person by Section 31.01:

(1) in each of the five preceding years, if the taxes on the property are delinquent for each of those years; or

(2) in each of the three preceding years, if:

(A) the taxes on the property are delinquent for each of those years; and

(B) a lien on the property has been created on the property in favor of the municipality for the cost of remedying a health or safety hazard on the property.

Sec. 33.92. INSTITUTION OF SEIZURE. (a) After property becomes subject to seizure under Section 33.91 or 33.911, the collector for a municipality or a county, as appropriate, may apply for a tax warrant to a district court in the county in which the property is located.

(b) The court shall issue the tax warrant if by affidavit the collector shows that the property is subject to seizure under Section 33.91 or 33.911.

(c) The court issuing the tax warrant shall include a statement as to the appraised value of the property according to the most recent appraisal roll approved by the appraisal review board. That value is presumed to be the market value of the property on the date that the warrant is issued.

Sec. 33.93. TAX WARRANT. (a) A tax warrant shall direct the sheriff or a constable in the county and the collector for the municipality or the county to seize the property described in the warrant, subject to the right of redemption, for the payment of the ad valorem taxes, penalties, and interest owing on the property included in the application, the amount secured by a municipal health or safety lien on the property included in the application, and the costs of seizure and sale. The warrant shall direct the person whose property is seized to disclose to a person executing the warrant the name and address if known of any other person having an interest in the property.

(b) A bond may not be required of a municipality ~~or county~~ for issuance or delivery of a tax warrant, and a fee or court cost may not be charged for issuance or delivery of the warrant.

(c) On issuance of a tax warrant, the collector shall take possession of the property pending its sale.

Sec. 33.94. NOTICE OF TAX SALE. (a) After a seizure of property, the collector for the municipality ~~or county~~ shall make a reasonable inquiry to determine the identity and address of any person, other than the person against whom the tax warrant is issued, having an interest in the property. The collector shall deliver as soon as possible a notice stating the time and place of the sale and briefly describing the property seized to the person against whom the warrant is issued and to any other person the collector determines has an interest in the property if the collector can ascertain the address of the other person.

(b) Failure to send or receive a notice required by this section does not affect the validity of the sale of the seized property or title to the property.

Sec. 33.95. PURCHASER. A purchaser for value at or subsequent to the tax sale may conclusively presume the validity of the sale and takes free of any claim of a party with a prior interest in the property subject to the provisions of Section 16.002(b), Civil Practice and Remedies Code, and subject to applicable rights of redemption.

SECTION 2. Section 34.01, Tax Code, is amended by adding Subsection (f) to read as follows:

(f) Except as provided in subsection (e), property seized under Subchapter E, Chapter 33, may not be sold for an amount that is less than the lesser of the market value of the property or the total amount of taxes due on the property. A taxing unit that takes title to property seized under that subchapter takes title to the property for the use and benefit of that taxing unit and all other taxing units that established tax liens in the suit or that, on the date of the seizure, were owed delinquent taxes on the property.

SECTION 3. Section 34.06(b), Tax Code, is amended to read as follows:

(b) The purchasing taxing unit shall pay all costs and expenses of court[,] ~~and sale and resale, and after deducting an amount equal to the amount the taxing unit has reasonably spent for the maintenance and preservation of the property,~~ shall distribute the remainder of the proceeds as provided by Section 34.02 of this Code for distribution of proceeds after payment of costs.

SECTION 4. Sections 34.21(a) and (b), Tax Code, are amended to read as follows:

(a) The owner of real property sold at a tax sale that was the residence homestead of the owner or that was land designated for agricultural use when judgment in the suit to collect the tax was rendered ~~rendered~~ ~~filed~~ ~~or when the tax warrant was issued~~ may redeem the property within two years after the date on which the purchaser's deed is filed for record by paying the purchaser the amount the purchaser bid for the property, the amount of the deed recording fee, and the amount paid by the purchaser as taxes, penalties, interest, and costs on the property, plus 25 percent of the aggregate total if the property is redeemed during the first year of the redemption period or 50 percent of the aggregate total if the property is redeemed during the second year of the redemption period.

(b) The owner of real property sold at a tax sale other than property covered by Subsection (a) may redeem the property within six months after the date on which the purchaser's deed is filed for record by paying the purchaser ~~an [the] amount equal to the greater of the seizure or judgment amount and costs or the amount~~ the purchaser bid for the property, ~~plus an [the] amount equal to the sum of the deed recording fee, and an amount equal to [the amount paid by the purchaser as taxes, penalties, interest, and costs of the property, plus]~~ 25 percent of the aggregate total. ~~A purchaser who is paid a redemption amount that exceeds 125 percent of the amount the purchaser paid for the property shall deliver an equal portion of the excess amount to each taxing unit that was a party to the judgment or tax warrant.~~

SECTION 5. Section 33.50(b), Tax Code, is amended to read as follows:

(b) If the judgment in a suit to collect a delinquent tax is for the foreclosure of a tax lien on property, the order of sale shall specify that the property may ~~[not] be sold to a taxing unit that is a party to the suit or to any other [a] person, other than a person~~ owning an interest in the property or ~~[to] any party to the suit that is not[, other than] a taxing unit, for [less than]~~ the market value of the property stated in the judgment or the aggregate amount of the judgments against the property, whichever is less.

SECTION 6. Section 33.51, Tax Code, is amended to read as follows:

Sec. 33.51. WRIT OF POSSESSION. If the court orders the foreclosure of a tax lien and the sale of real property, the judgment shall provide for the issuance of a writ of possession to the purchaser at the sale or his assigns within 20 days after the ~~purchaser's deed is filed of record [period of redemption expires].~~

SECTION 7. This Act takes effect September 1, 1997.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Cain, the Senate concurred in the House amendment to **SB 141** by a viva voce vote.

HOUSE BILL 3587 ON SECOND READING

On motion of Senator Haywood and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 3587, Relating to the acquisition or lease of hospital facilities by certain county-municipality hospital boards.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 3587 ON THIRD READING

Senator Haywood moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3587** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

HB 3587 was read third time and was passed by a viva voce vote.

HOUSE BILL 3161 ON SECOND READING

Senator Duncan asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

HB 3161, Relating to medical examinations required for an employee who may be entitled to workers' compensation benefits; providing an administrative penalty.

There was objection.

Senator Duncan then moved to suspend the regular order of business and take up **HB 3161** for consideration at this time.

The motion prevailed by the following vote: Yeas 23, Nays 8.

Yeas: Armbrister, Bivins, Brown, Cain, Carona, Duncan, Fraser, Galloway, Harris, Haywood, Lindsay, Lucio, Madla, Moncrief, Nelson, Nixon, Ogden, Patterson, Ratliff, Shapiro, Sibley, Wentworth, Zaffirini.

Nays: Barrientos, Ellis, Gallegos, Luna, Shapleigh, Truan, West, Whitmire.

HB 3161 was read second time and was passed to third reading by the following vote: Yeas 23, Nays 8. (Same as previous roll call)

(President in Chair)

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Friday, May 23, 1997

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HCR 287, Instructing the enrolling clerk of the house to make technical corrections in H.B. 710.

SB 274, Relating to the operation of The University of Texas at Brownsville.
(Amended)

SB 343, Relating to speed limits for vehicles towing certain trailers.
(Committee Substitute/Amended)

SB 352, Relating to the continuation, functions, and name of the Texas National Guard Armory Board.
(Committee Substitute/Amended)

SB 359, Relating to the continuation and operation of the Department of Protective and Regulatory Services, the provision of services to children and families, and suits affecting the parent-child relationship; providing penalties.
(Committee Substitute/Amended)

SB 371, Relating to the continuation and functions of the Texas Commission on Fire Protection.
(Committee Substitute/Amended)

SB 495, Relating to travel expenses incurred by state officers and employees.
(Amended)

SB 681, Relating to the alternative fuels program.
(Amended)

SB 1514, Relating to coordinating colonia initiatives.
(Committee Substitute)

SB 1591, Relating to the authority of the Texas Natural Resource Conservation Commission regarding pollution control or abatement flexibility.
(Amended)

SJR 43, Proposing a constitutional amendment authorizing the legislature to limit increases in value and the frequency of appraisals of residence homesteads for property tax purposes and to provide for the transfer to a different residence homestead of the school property tax freeze on residence homesteads of the elderly.
(Committee Substitute/Amended)

THE HOUSE HAS CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 66 (145 Yeas 0 Nays 1 Present-not voting)

HB 92 (88 Yeas 56 Nays 2 Present-not voting)

HB 325 (Viva-voce vote)

HB 332 (Viva-voce vote)

HB 1039 (Viva-voce vote)

HB 1445 (Viva-voce vote)

HB 1595 (131 Yeas 0 Nays 1 Present-not voting)

HB 1640 (Viva-voce vote)

HB 1990 (Viva-voce vote)

HB 2776 (Viva-voce vote)

HB 2778 (Viva-voce vote)

HB 3112 (142 Yeas 0 Nays 1 Present-not voting)

HB 3581 (144 Yeas 0 Nays 1 Present-not voting)

HB 3590 (Viva-voce vote)

HCR 44 (Viva-voce vote)

THE HOUSE HAS REFUSED TO CONCUR IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

HB 381

House Conferees: Swinford - Chair/Chisum/Elkins/Patterson, L.P. "Pete"/Rhodes

HB 966

House Conferees: Oakley - Chair/Kamel/Kuempel/Longoria/Merritt

HB 1548

House Conferees: Turner, Sylvester - Chair/Bailey/Reyna, Elvira/Williams/Yarbrough

HB 2777

House Conferees: Junell - Chair/Berlanga/Eiland/Krusee/Naishtat

HB 2846

House Conferees: Berlanga - Chair/Davila/Delisi/Hirschi/Maxey

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 2692 (142 Yeas 0 Nays 1 Present-not voting)

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

**MOTION TO PLACE
HOUSE BILL 3350 ON SECOND READING**

Senator Sibley moved to suspend the regular order of business to take up for consideration at this time:

HB 3350, Relating to the criminal offenses applicable to gambling and gambling devices.

On motion of Senator Sibley and by unanimous consent, the motion to suspend the regular order of business was withdrawn.

HOUSE BILL 1150 ON SECOND READING

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 1150, Relating to the notification of school personnel of the arrest or detention of a student and any subsequent disposition of that arrest or detention.

The bill was read second time.

Senator Shapiro offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 1150** by striking the first two lines of the bill after the enacting clause (Engrossed version page 1, lines 6 and 7) and substituting the following:

SECTION 1. Subsections (a), (b), (c), and (h), Article 15.27, Code of Criminal Procedure, are amended to read as follows:

(a) A law enforcement agency that arrests or takes into custody as provided by Chapter 52, Family Code, an individual who the agency [~~knows or~~] believes is enrolled as a student in a public primary or secondary school, for an offense listed in Subsection (h) of this article, shall attempt to ascertain whether the person is so enrolled. If the law enforcement agency ascertains that the individual is enrolled as a student in a public primary or secondary school, the agency shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is enrolled [~~or believed to be enrolled~~] of that arrest or detention within 24 hours after the arrest or detention, or on the next school day. If the law enforcement agency cannot ascertain whether the individual is enrolled as a student, the agency shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is believed to be enrolled of that arrest or detention within 24 hours after the arrest or detention, or on the next school day. If the individual is a student, the [~~The~~] superintendent shall promptly notify all instructional and support personnel who have regular contact with the student. All personnel shall keep the information received in this subsection confidential. The State Board for Educator Certification may revoke or suspend the certification of personnel who intentionally violate this subsection. Within seven days after the date the oral notice is given, the law enforcement agency shall mail written notification, marked "PERSONAL and CONFIDENTIAL" on the mailing envelope, to the superintendent or the person designated by the superintendent. The written notification must have the following printed on its face in large, bold letters: "WARNING: The information contained in this notice is intended only to inform appropriate school personnel of an arrest or detention of a student believed to be enrolled in this school. An arrest or detention should not be construed as proof that the student is guilty. Guilt is determined in a court of law. THE INFORMATION CONTAINED IN THIS NOTICE IS CONFIDENTIAL!"

(b) On conviction or on an adjudication of delinquent conduct of an individual enrolled as a student in a public primary or secondary school, for an offense or for any conduct listed in Subsection (h) of this article, the office of the prosecuting attorney acting in the case shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is enrolled of the conviction or adjudication. Oral notification must be given within 24 hours of the time of the determination of guilt, or on the next school day. The superintendent shall promptly notify all instructional and support personnel who have regular contact with the

student. Within seven days after the date the oral notice is given, the office of the prosecuting attorney shall mail written notice, which must contain a statement of the offense of which the individual is convicted or on which the adjudication is grounded.

(c) A parole or probation office having jurisdiction over a student described by Subsection (a), (b), or (e) of this article who transfers from a school or is subsequently removed from a school and later returned to a school or school district other than the one the student was enrolled in when the arrest, detention, conviction, or adjudication occurred shall notify the new school officials of the arrest or detention in a manner similar to that provided for by Subsection (a) or (e)(1) of this article, or of the conviction or delinquent adjudication in a manner similar to that provided for by Subsection (b) or (e)(2) of this article. The new school officials shall promptly notify all instructional and support personnel who have regular contact with the student.

The committee amendment was read and was adopted by a viva voce vote.

Senator Shapiro offered the following committee amendment to the bill:

Committee Amendment No. 2

Amend **HB 1150** by adding the following new sections to the bill, appropriately numbered, and renumbering subsequent sections of the bill accordingly:

SECTION __. Subchapter A, Chapter 37, Education Code, is amended by adding Section 37.0031 to read as follows:

Sec. 37.0031. LIMITING ASSIGNMENT OF CERTAIN STUDENTS TO CLASS OF VICTIM. A student who has been adjudicated as having engaged in delinquent conduct as defined under Section 51.03, Family Code, that included violation of Section 21.11, 22.011, or 22.021, Penal Code, or who has been convicted of an offense under one of those sections, may not be assigned to the same class as the victim of that delinquent conduct or offense, as applicable, without the consent of the victim's parent or of the victim, if the victim is 18 years of age or older, unless the committee established under Section 37.003 determines that such a placement is the only alternative.

SECTION __. Section 37.003(a), Education Code, is amended to read as follows:

(a) Each school shall establish a three-member committee to determine placement of a student when a teacher refuses the return of a student to the teacher's class or a parent or victim refuses the student's assignment to a class under Section 37.0031 and to make recommendations to the district regarding readmission of expelled students. Members shall be appointed as follows:

(1) the campus faculty shall choose two teachers to serve as members and one teacher to serve as an alternate member; and

(2) the principal shall choose one member from the professional staff of a campus.

The committee amendment was read and was adopted by a viva voce vote.

HB 1150 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1150 ON THIRD READING

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1150** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

HB 1150 was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 1467 ON SECOND READING

On motion of Senator Shapleigh and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 1467, Relating to extending the period of community supervision for certain persons convicted of a misdemeanor.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1467 ON THIRD READING

Senator Shapleigh moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1467** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

HB 1467 was read third time and was passed by a viva voce vote.

HOUSE BILL 1294 ON SECOND READING

Senator Haywood moved to suspend the regular order of business to take up for consideration at this time:

HB 1294, Relating to continuing education requirements for county commissioners.

The motion prevailed by the following vote: Yeas 22, Nays 6.

Yeas: Armbrister, Barrientos, Brown, Ellis, Fraser, Gallegos, Galloway, Haywood, Lindsay, Lucio, Madla, Moncrief, Nelson, Nixon, Ogden, Patterson, Shapleigh, Sibley, Truan, West, Whitmire, Zaffirini.

Nays: Bivins, Carona, Duncan, Harris, Ratliff, Wentworth.

Absent: Cain, Luna, Shapiro.

HB 1294 was read second time.

Senator Haywood offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 1294** in SECTION 1 of the bill, proposed Section 81.0025(f), Local Government Code, by striking "250,000" and substituting "225,000".

The committee amendment was read and was adopted by a viva voce vote.

HB 1294 as amended was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Bivins, Carona, Duncan, Harris, Ratliff, and Wentworth asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 1294 ON THIRD READING

Senator Haywood moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1294** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 4.

Yeas: Armbrister, Barrientos, Brown, Cain, Carona, Ellis, Fraser, Gallegos, Galloway, Haywood, Lindsay, Lucio, Madla, Moncrief, Nelson, Nixon, Ogden, Patterson, Shapiro, Shapleigh, Sibley, Truan, West, Whitmire, Zaffirini.

Nays: Bivins, Harris, Ratliff, Wentworth.

Absent: Duncan, Luna.

HB 1294 was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Bivins, Carona, Duncan, Harris, Ratliff, and Wentworth asked to be recorded as voting "Nay" on the final passage of the bill.

COMMITTEE SUBSTITUTE

HOUSE BILL 331 ON SECOND READING

Senator Madla asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

CSHB 331, Relating to certain election processes and procedures.

There was objection.

Senator Madla then moved to suspend the regular order of business and take up **CSHB 331** for consideration at this time.

The motion prevailed by the following vote: Yeas 27, Nays 1.

Nays: Gallegos

Absent: Barrientos, Luna, West.

CSHB 331 was read second time.

(Senator Truan in Chair)

Senator Madla offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 331** as follows:

(1) In Section 9 of the bill, in amended Section 32.002(c), Election Code,

strike the fourth sentence (Committee Printing page 2, lines 53-57) and substitute the following:

The commissioners court may reject the list if the persons whose names are submitted on the list are determined not to meet the applicable eligibility requirements. If the list is rejected, the appointment shall be made for the full term in accordance with the same procedures provided for the filling of vacancies under Subsection (d) based on the time of the rejection instead of the time that a vacancy occurs.

(2) In Section 9 of the bill, in amended Section 32.002(d), Election Code, strike the second and third sentences (Committee Printing page 2, line 64, through page 3, line 2) and substitute the following: Not later than 48 hours after the county clerk becomes aware of a vacancy, the county clerk shall notify the county chair of the same political party with which the original judge was affiliated or aligned of the vacancy. Not later than the fifth day after the date of notification of the vacancy, the county chair of the same political party with which the original judge was affiliated or aligned shall submit to the commissioners court in writing the name of a person who is eligible for the appointment.

(3) In Section 25 of the bill, in amended Section 61.010(b), Election Code, strike the language after "Subsection (a)" and before the period (Committee Printing page 5, lines 67 and 68) and substitute "a [name] tag or official badge that indicates the person's name and title or position".

(4) In Section 33 of the bill, in amended Sections 85.031(b) and (c), Election Code, strike the language beginning with "(b) A signature roster" and ending with "(c) On accepting a voter [if" (Committee Printing page 7, lines 61-63) and substitute the following:

"(b) On accepting a voter [~~A signature roster is not required to be maintained at an early voting polling place.~~

~~[(c) If~~

(5) Insert an appropriately numbered section of the bill as follows:

SECTION __. Section 67.003, Election Code, is amended to read as follows:

Sec. 67.003. TIME FOR LOCAL CANVASS. Each local canvassing authority shall convene to conduct the local canvass at the time set by the canvassing authority's presiding officer:

(1) on the seventh day after election day for the general election for state and county officers; or

(2) not earlier than the third [second] day or later than the sixth day after election day for an election other than the general election for state and county officers [at the time set by the canvassing authority's presiding officer].

(6) In Section 37 of the bill, strike added Section 86.007(d)(3), Election Code (Committee Printing page 8, lines 57-62), and substitute the following:

(3) the ballot arrives at the address on the carrier envelope not later than:

(A) the fifth day after the date of the general election for state and county officers; or

(B) the second day after the date of an election other than the general election for state and county officers.

(7) In Section 37 of the bill, in added Section 86.007(f), Election Code (Committee Printing page 9, line 7), after the period, insert a new sentence to read as follows:

Section 1.006 does not apply to Subsection (d)(3)(A).

(8) Strike Section 38 of the bill (Committee Printing page 9, lines 10-17).

(9) In Section 43 of the bill, strike added Section 101.004(f), Election Code (Committee Printing page 9, line 67, through page 10, line 4), and substitute the following:

(f) The applicant is entitled to receive only a federal ballot to be voted by mail under Chapter 114 if:

(1) the applicant submits the federal postcard application to the early voting clerk after the 30th day before election day and before the sixth day before election day; and

(2) the application contains the information that is required for registration under Title 2.

(10) In Section 43 of the bill, strike added Section 101.004(i), Election Code (Committee Printing page 10, lines 13-22), and substitute the following:

(i) For purposes of determining the date a federal postcard application is submitted to the early voting clerk, an application is considered to be submitted on the date it is placed and properly addressed in the United States mail. The date indicated by the post office cancellation mark is considered to be the date the application was placed in the mail unless proven otherwise. For purposes of an application made under Subsection (e):

(1) an application that does not contain a cancellation mark is considered to be timely if it is received by the early voting clerk on or before the 22nd day before election day; and

(2) if the 30th day before the date of an election is a Saturday, Sunday, or legal state or national holiday, an application is considered to be timely if it is submitted to the early voting clerk on or before the next regular business day.

(11) In Section 45 of the bill, strike added Section 105.001, Election Code (Committee Printing page 10, lines 50-57), and substitute the following:

Sec. 105.001. ELECTRONIC TRANSMISSION OF COMPLETED BALLOT. (a) The secretary of state shall prescribe procedures to allow a person who is casting an early voting ballot by mail to return the ballot by telephonic facsimile machine or similar electronic means if the person:

(1) is a member of the armed forces of the United States who is on active duty overseas, or the spouse or a dependent of the member; and

(2) is casting the ballot from an area:

(A) in which members of the armed forces are eligible to receive hostile fire pay or imminent danger pay; or

(B) that has been designated by the president of the United States as a combat zone.

(b) The procedures must:

(1) provide for verification of the voter;

(2) provide for the security of the transmission; and

(3) require the early voting clerk to maintain a record of each ballot received under this section.

(c) A ballot transmitted under this section or by mail may not be counted if the ballot has previously been transmitted to the early voting clerk by electronic means under this section.

(12) In Section 45 of the bill, in added Section 105.002, Election Code (Committee Printing page 10, line 58, through page 11, line 1), strike Subsections (a) and (b) and substitute the following:

(a) The secretary of state shall prescribe procedures to allow a voter to apply for and cast a state write-in ballot before the time a voter may receive a regular ballot to be voted by mail if the voter:

(1) is a member of the armed forces of the United States or the spouse or a dependent of a member;

(2) is unable to cast a ballot on election day or during the regular period for early voting because of a military contingency; and

(3) makes an application on a federal postcard application that:

(A) indicates that the person desires a state write-in ballot; and

(B) contains the information that is required for registration under Title 2.

(13) In Section 45 of the bill, in added Section 105.002, Election Code:

(A) reletter Subsection (c) as Subsection (b) (Committee Printing page 11, line 2);

(B) reletter Subsection (d) as Subsection (c) (Committee Printing page 11, line 7); and

(C) add a new Subsection (d) (Committee Printing page 11, after line 11) to read as follows:

(d) If a person casts a ballot under this section and under Chapter 114, the early voting clerk shall examine both ballots to determine the voter's intent.

(14) Insert appropriately numbered sections of the bill as follows:

SECTION __. Section 146.054, Election Code, is amended to read as follows:

Sec. 146.054. FILING DEADLINE. A declaration of write-in candidacy must be filed not later than 5 p.m. of the fifth day after the date an application for a place on the ballot is required to be filed ~~[45th day before election day. However, if a candidate whose name is to appear on the ballot dies or is declared ineligible after the 48th day before election day, a declaration of write-in candidacy for the office sought by the deceased or ineligible candidate may be filed not later than 5 p.m. of the 42nd day before election day].~~

SECTION __. Section 11.056(b), Education Code, is amended to read as follows:

(b) A declaration of write-in candidacy must be filed not later than 5 p.m. of the fifth day after the date an application for a place on the ballot is required to be filed ~~[30th day before the date of the election. However, if a candidate whose name is to appear on the ballot dies or is declared ineligible after the 33rd day before the date of the election, a declaration of write-in candidacy for the office sought by the deceased or ineligible candidate may be filed not later than 5 p.m. of the 27th day before the date of the election].~~

(15) Strike Section 59 of the bill (Committee Printing page 14, lines 27-41).

(16) Strike Section 73 of the bill (Committee Printing page 18, lines 20-49).

(17) Renumber remaining sections of the bill accordingly.

The amendment was read and was adopted by a viva voce vote.

Senator Lindsay offered the following amendment to the bill:

Floor Amendment No. 2

Amend CSHB 331 as follows:

(1) On page 18, line 20, insert the following new section and renumber the subsequent sections appropriately.

SECTION 73. Section 277.004, Election Code, is amended to read as follows:

Sec. 277.004 EFFECT OF CITY CHARTER OR ORDINANCE. Any requirements for the validity or verification of petition signatures in addition to those prescribed by this chapter that are prescribed by a home-rule city charter provision or a city ordinance are effective only if the charter provision or ordinance was in effect September 1, 1985. A petition for a referendum relating to wages paid in private employment shall not be valid, without regard to any charter provision or ordinance, unless it is signed by more than thirty percent of qualified voters.

The amendment was read and failed of adoption by the following vote: Yeas 13, Nays 15.

Yeas: Bivins, Brown, Fraser, Galloway, Harris, Haywood, Lindsay, Nelson, Nixon, Patterson, Ratliff, Shapiro, Zaffirini.

Nays: Barrientos, Cain, Duncan, Ellis, Gallegos, Lucio, Luna, Madla, Moncrief, Ogden, Shapleigh, Sibley, Truan, West, Whitmire.

Absent: Armbrister, Carona, Wentworth.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 3

Amend CSHB 331 by inserting appropriately numbered sections of the bill as follows and renumbering remaining sections of the bill accordingly:

SECTION __. Section 41.002, Election Code, is amended to read as follows:

Sec. 41.002. GENERAL ELECTION FOR STATE AND COUNTY OFFICERS. (a) The general election for state and county officers, including the nonpartisan judicial runoff election, shall be held on the first Tuesday after the first Monday in November in even-numbered years.

(b) The nonpartisan judicial general election shall be held on the date of the general primary election.

SECTION __. The Election Code is amended by adding Title 17 to read as follows:

TITLE 17. NONPARTISAN JUDICIAL ELECTIONS
CHAPTER 291. NONPARTISAN JUDICIAL ELECTION
SUBCHAPTER A. NONPARTISAN
ELECTION OF JUDGES GENERALLY

Sec. 291.001. APPLICABILITY OF CHAPTER. An appellate justice or judge is subject to nonpartisan election in accordance with this chapter at the last nonpartisan judicial general election to be held before the date the justice's or judge's term expires.

Sec. 291.002. PARTY NOMINATION PROHIBITED. Nomination for a nonpartisan judicial office by a political party is prohibited.

Sec. 291.003. VOTE REQUIRED FOR ELECTION. (a) The name of each candidate who qualifies for a place on the nonpartisan judicial election ballot shall be placed on the ballot for the nonpartisan judicial general election, the voting on which shall be in conjunction with each party's general primary election. If a candidate receives a majority of the total number of votes received aggregately by all the candidates for the office, the candidate shall be declared elected.

(b) If no candidate receives a majority of the votes, the names of the two candidates who receive the highest and second highest number of votes or who tie for the highest number of votes shall be placed on the nonpartisan judicial runoff election ballot in conjunction with the general election for state and county officers, and the candidate receiving the most votes shall be declared elected.

Sec. 291.004. APPLICABILITY OF OTHER PARTS OF CODE. The other titles of this code apply to a nonpartisan judicial election except provisions that are inconsistent with this title or that cannot feasibly be applied in a nonpartisan judicial election.

Sec. 291.005. ADDITIONAL PROCEDURES. The secretary of state shall prescribe any additional procedures necessary for the orderly and proper administration of elections held under this chapter.

[Sections 291.006-291.020 reserved for expansion]

SUBCHAPTER B. APPLICATION FOR PLACE ON BALLOT

Sec. 291.021. APPLICATION REQUIRED. (a) To be entitled to a place on the nonpartisan judicial election ballot, a candidate must make an application for a place on the ballot.

(b) An application must, in addition to complying with Section 141.031, be accompanied by the appropriate filing fee or, instead of the filing fee, a petition that satisfies the requirements prescribed by Section 141.062.

(c) An application filed by mail is considered to be filed at the time of its receipt by the appropriate authority.

(d) The circulation of a petition to be filed under this subchapter in connection with a candidate's application for a place on the ballot does not constitute candidacy or an announcement of candidacy for purposes of the automatic resignation provisions of Section 65, Article XVI, or Section 11, Article XI, Texas Constitution.

(e) A candidate for an office specified by Section 291.024(a)(3) who chooses to pay the filing fee must also accompany the application with a petition that complies with the requirements prescribed for the petition

authorized by Subsection (b), except that the minimum number of signatures that must appear on the petition required by this subsection is 250. If the candidate chooses to file the petition authorized by Subsection (b) instead of the filing fee, the minimum number of signatures required for that petition is increased by 250. Signatures on a petition filed under this subsection or Subsection (b) by a candidate covered by this subsection may not be obtained on the grounds of a county courthouse or courthouse annex.

Sec. 291.022. AUTHORITY WITH WHOM APPLICATION FILED. An application for a place on the nonpartisan judicial election ballot must be filed with the secretary of state.

Sec. 291.023. REGULAR FILING DEADLINE. (a) An application for a place on the nonpartisan judicial election ballot must be filed not later than the regular filing deadline for candidates in the general primary election, except as provided by Section 291.053.

(b) An application may not be filed earlier than the 30th day before the date of the regular filing deadline.

Sec. 291.024. FILING FEE. (a) The filing fee for a nonpartisan judicial candidate is as follows:

<u>(1) office elected statewide.....</u>	<u>\$3,000</u>
<u>(2) chief justice or justice, court of appeals, other than a justice specified by Subdivision (3)</u>	<u>1,500</u>
<u>(3) chief justice or justice of a court of appeals that serves a court of appeals district in which a county with a population of more than one million is wholly or partly situated</u>	<u>2,000</u>

(b) A filing fee received by the secretary of state shall be deposited in the state treasury to the credit of the general revenue fund.

Sec. 291.025. NUMBER OF PETITION SIGNATURES REQUIRED. The minimum number of signatures that must appear on the petition authorized by Section 291.021 is:

- (1) for a statewide office, 5,000; or
- (2) for a district office, the lesser of:

(A) 500; or

(B) two percent of the total vote received in the district by all the candidates for governor in the most recent gubernatorial general election.

Sec. 291.026. STATEMENT ON PETITION. The following statement must appear at the top of each page of a petition to be filed under Section 291.021: "I know that the purpose of this petition is to entitle (insert candidate's name) to have his or her name placed on the ballot for the office of (insert office title, including any place number or other distinguishing number) for the nonpartisan judicial election."

Sec. 291.027. CERTIFICATION OF NAMES FOR PLACEMENT ON NONPARTISAN JUDICIAL GENERAL ELECTION BALLOT. (a) Except as provided by Subsection (c), the secretary of state shall certify in writing for placement on the nonpartisan judicial general election ballot the name of each candidate who files with the secretary an application that complies with Section 291.021(b).

(b) Not later than the deadline for the state chair to deliver to the county chairs the certification of names for placement on the general primary

election ballot, the secretary of state shall deliver the certification to the county clerk in each county in which the candidate's name is to appear on the ballot.

(c) A candidate's name may not be certified:

(1) if, before delivering the certification, the secretary of state learns that the name is to be omitted from the ballot under Section 291.054; or

(2) for an office for which the candidate's application is invalid under Section 141.033.

[Sections 291.028-291.050 reserved for expansion]

SUBCHAPTER C. WITHDRAWAL,

DEATH, AND INELIGIBILITY OF CANDIDATE

Sec. 291.051. WITHDRAWAL, DEATH, OR INELIGIBILITY GENERALLY. With respect to withdrawal, death, or ineligibility of a candidate in a nonpartisan judicial election, this subchapter supersedes Subchapter A, Chapter 145, to the extent of any conflict.

Sec. 291.052. WITHDRAWAL FROM NONPARTISAN JUDICIAL GENERAL ELECTION. (a) A candidate may not withdraw from the nonpartisan judicial general election after the 62nd day before general primary election day.

(b) A withdrawal request must be filed with the authority with whom the withdrawing candidate's application for a place on the ballot is required to be filed.

Sec. 291.053. EXTENDED FILING DEADLINE. (a) If a candidate dies, withdraws, or is declared ineligible under circumstances that would result in an extension of the filing deadline in a party primary, the filing deadline for nonpartisan judicial candidates for that office is extended in the same manner as provided for a primary election.

(b) If the deadline for filing applications is extended, notice of the extended filing shall be given in the same manner as provided for a primary election.

Sec. 291.054. WITHDRAWN, DECEASED, OR INELIGIBLE CANDIDATE'S NAME OMITTED FROM NONPARTISAN JUDICIAL GENERAL ELECTION BALLOT. A candidate's name shall be omitted from the nonpartisan judicial general election ballot if the candidate withdraws, dies, or is declared ineligible on or before the 62nd day before general primary election day.

Sec. 291.055. DECEASED OR INELIGIBLE CANDIDATE'S NAME TO APPEAR ON NONPARTISAN JUDICIAL GENERAL ELECTION BALLOT. If a candidate who has made an application for a place on the nonpartisan judicial election ballot that complies with the applicable requirements dies or is declared ineligible after the 62nd day before general primary election day, the candidate's name shall be placed on the nonpartisan judicial general election ballot.

Sec. 291.056. WITHDRAWAL, DEATH, OR INELIGIBILITY OF CANDIDATE IN NONPARTISAN JUDICIAL RUNOFF ELECTION. The provisions of this code applicable to the withdrawal, death, or ineligibility of an independent candidate in the general election for state and county officers apply to a candidate in the nonpartisan judicial runoff election in conjunction with the general election.

[Sections 291.057-291.070 reserved for expansion]

SUBCHAPTER D. BALLOT

Sec. 291.071. ORDER OF NAMES ON NONPARTISAN JUDICIAL GENERAL ELECTION BALLOT; CERTIFICATION TO PARTIES. (a) The order of the candidates' names on the nonpartisan judicial general election ballot shall be determined by a drawing conducted by the county clerk.

(b) The drawing shall be conducted in the same manner and by the same deadline as provided for a party primary election.

(c) Within the time for preparing the party primary ballots for a county, the county clerk shall prepare the official nonpartisan judicial general election ballot and shall certify the ballot forms to the primary committee of each political party that is holding a primary election in the county. At the same time, the county clerk shall certify the number of separate nonpartisan judicial ballots that are to be printed for each election precinct.

Sec. 291.072. NONPARTISAN JUDICIAL ELECTION BALLOT. The nonpartisan judicial offices and candidates shall be listed as a separate ballot on each party's primary ballot and on the general election ballot, as appropriate, following the partisan offices, under the heading "Election for Nonpartisan Judicial Offices."

Sec. 291.073. SEPARATE NONPARTISAN JUDICIAL BALLOTS IN PRIMARY. A sufficient number of separate ballots, listing only the nonpartisan judicial offices and candidates, shall be provided for the use of voters who desire to vote in the nonpartisan judicial general election but who do not desire to vote in the party primary.

[Sections 291.074-291.090 reserved for expansion]

SUBCHAPTER E. CONDUCT OF ELECTION

Sec. 291.091. GENERAL PROCEDURE FOR CONDUCT OF NONPARTISAN JUDICIAL GENERAL ELECTION. (a) Any qualified voter is eligible to vote in the nonpartisan judicial general election regardless of whether the voter desires to vote in the party primary.

(b) The signature rosters and poll lists for the elections shall be maintained to indicate the voters who vote in a party primary and those who vote only in the nonpartisan judicial election. The secretary of state shall prescribe procedures for maintaining the signature rosters, poll lists, lists of registered voters, and other precinct election records used at the election. The official forms for the election records shall be prescribed to reflect, as necessary, the distinction between the party voters and candidates and the nonpartisan judicial voters and candidates.

(c) Except as otherwise provided by this chapter, the nonpartisan judicial general election shall be conducted in accordance with the procedures prescribed by this code in relation to the general primary election to the extent those procedures can be made applicable.

Sec. 291.092. CERTIFICATION OF RESULTS OF NONPARTISAN JUDICIAL GENERAL ELECTION. Not later than the deadline for delivering the county election returns for statewide and district partisan offices to the state chair, each county chair shall deliver a written certification of the tabulation of results from the local canvass to the secretary of state.

Sec. 291.093. FINAL CANVASS FOR NONPARTISAN JUDICIAL GENERAL ELECTION. On the date prescribed by this code for the final canvass of statewide and district offices in the party primary, the final canvass for the nonpartisan judicial general election shall be conducted by the governor.

Sec. 291.094. GENERAL PROCEDURE FOR CONDUCT OF NONPARTISAN JUDICIAL RUNOFF ELECTION. Except as otherwise provided by this code, the nonpartisan judicial runoff election held in conjunction with the general election for state and county officers shall be conducted and the results canvassed, tabulated, and reported in the manner applicable to partisan offices in the general election for state and county officers.

SECTION __. Section 1.005, Election Code, is amended by amending Subdivision (9) and by adding Subdivisions (25) and (26) to read as follows:

(9) "Independent candidate" means a candidate in a nonpartisan election or a candidate in a partisan election who is not the nominee of a political party. The term does not include a nonpartisan judicial candidate.

(25) "Nonpartisan judicial election" means an election held under Title 17.

(26) "Nonpartisan judicial candidate" means a candidate in a nonpartisan judicial election.

SECTION __. Section 41.007(d), Election Code, is amended to read as follows:

(d) Except as otherwise provided by this code, no [No] other election may be held on the date of a primary election.

SECTION __. Section 52.092, Election Code, is amended by amending Subsections (a), (c), (d), and (g)-(j) and by adding Subsection (k) to read as follows:

(a) For an election at which offices regularly filled at the general election for state and county officers, including the nonpartisan judicial election, are to appear on the ballot, the offices shall be listed in the following order:

- (1) offices of the federal government;
- (2) offices of the state government:
 - (A) statewide offices;
 - (B) district offices;
- (3) offices of the county government:
 - (A) county offices;
 - (B) precinct offices.

(c) Statewide offices of the state government shall be listed in the following order:

- (1) governor;
- (2) lieutenant governor;
- (3) attorney general;
- (4) comptroller of public accounts;
- (5) ~~[state treasurer];~~
- ~~[(6)]~~ commissioner of the General Land Office;
- ~~(6)~~ ~~[(7)]~~ commissioner of agriculture;
- ~~(7)~~ ~~[(8)]~~ railroad commissioner[;]

- ~~[(9) chief justice, supreme court;~~
- ~~[(10) justice, supreme court;~~
- ~~[(11) presiding judge, court of criminal appeals;~~
- ~~[(12) judge, court of criminal appeals].~~

(d) District offices of the state government shall be listed in the following order:

- (1) member, State Board of Education;
- (2) state senator;
- (3) state representative;
- (4) ~~[chief justice, court of appeals;~~
- ~~[(5) justice, court of appeals;~~
- ~~[(6) district judge;~~
- (5) ~~[(7) criminal district judge;~~
- (6) ~~[(8) family district judge;~~
- (7) ~~[(9) district attorney;~~
- (8) ~~[(10) criminal district attorney.~~

(g) The nonpartisan judicial offices shall be listed in the following order:

- (1) chief justice, supreme court;
- (2) justice, supreme court;
- (3) presiding judge, court of criminal appeals;
- (4) judge, court of criminal appeals;
- (5) chief justice, court of appeals;
- (6) justice, court of appeals.

(h) ~~[(g)]~~ If two or more offices having the same title except for a place number or other distinguishing number are to appear on the ballot, the number shall appear as part of the office title and the offices shall be listed in numerical order.

(i) ~~[(h)]~~ The secretary of state shall assign a place number to each position to be filled at the nonpartisan judicial ~~[general]~~ election for ~~[state and county officers for each full or unexpired term in]~~ the following offices:

- (1) justice, supreme court;
- (2) judge, court of criminal appeals; and
- (3) justice, court of appeals in a court having a membership in excess of three, if distinguishing the positions to be filled is necessary.

(j) ~~[(i)]~~ The secretary of state shall designate the position of new offices on the ballot.

(k) ~~[(j)]~~ The office of judge of a multicounty statutory county court created under Subchapter D, Chapter 25, Government Code, is considered to be a county office for purposes of listing the office on the ballot and to be a district office for all other purposes under this code.

SECTION ____ . Section 141.001(a), Election Code, is amended to read as follows:

(a) To be eligible to be a candidate for, or elected or appointed to, a public elective office in this state, a person must:

- (1) be a United States citizen;
- (2) be 18 years of age or older on the first day of the term to be filled at the election or on the date of appointment, as applicable;
- (3) have not been determined mentally incompetent by a final judgment of a court;

(4) have not been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities;

(5) have resided continuously in the state for 12 months and in the territory from which the office is elected for six months immediately preceding the following date:

(A) for a candidate whose name is to appear on a general primary election ballot, the date of the regular filing deadline for a candidate's application for a place on the ballot;

(B) for an independent candidate or a nonpartisan judicial candidate, the date of the regular filing deadline for a candidate's application for a place on the ballot;

(C) for a write-in candidate, the date of the election at which the candidate's name is written in;

(D) for a party nominee who is nominated by any method other than by primary election, the date the nomination is made; and

(E) for an appointee to an office, the date the appointment is made; and

(6) satisfy any other eligibility requirements prescribed by law for the office.

SECTION ____ . Section 145.003(b), Election Code, is amended to read as follows:

(b) A candidate in the general election for state and county officers, including the nonpartisan judicial election, may be declared ineligible before the 30th day preceding election day by:

(1) the party officer responsible for certifying the candidate's name for placement on the general election ballot, in the case of a candidate who is a political party's nominee; or

(2) the authority with whom the candidate's application for a place on the ballot is required to be filed, in the case of an independent candidate or a nonpartisan judicial candidate, as applicable.

SECTION ____ . Section 145.005(a), Election Code, is amended to read as follows:

(a) If the name of a deceased or ineligible candidate appears on the ballot [~~under this chapter~~], the votes cast for the candidate shall be counted and entered on the official election returns in the same manner as for the other candidates.

SECTION ____ . Sections 172.021(c) and (e), Election Code, are amended to read as follows:

(c) An application filed by mail is considered to be filed at the time of its receipt by the appropriate authority.

(e) A candidate for an office specified by Section 172.024(a)(8) or [;] (10)[~~or (12)~~], or for justice of the peace in a county with a population of more than one million [850,000], who chooses to pay the filing fee must also accompany the application with a petition that complies with the requirements prescribed for the petition authorized by Subsection (b), except that the minimum number of signatures that must appear on the petition required by this subsection is 250. If the candidate chooses to file the petition authorized by Subsection (b) instead of the filing fee, the minimum number of signatures

required for that petition is increased by 250. Signatures on a petition filed under this subsection or Subsection (b) by a candidate covered by this subsection may not be obtained on the grounds of a county courthouse or courthouse annex.

SECTION ____ . Section 172.024(a), Election Code, is amended to read as follows:

(a) The filing fee for a candidate for nomination in the general primary election is as follows:

- (1) United States senator \$4,000
- (2) office elected statewide, except United States senator 3,000
- (3) United States representative 2,500
- (4) state senator 1,000
- (5) state representative 600
- (6) member, State Board of Education 250
- (7) ~~chief justice or justice, court of appeals, other than a justice specified by Subdivision (8)~~ 1,500
- ~~[(8) chief justice or justice of a court of appeals that serves a court of appeals district in which a county with a population of more than 850,000 is wholly or partly situated] 2,000~~
- ~~[(9) district judge or judge specified by Section 52.092(d) for which this schedule does not otherwise prescribe a fee] 1,200~~
- (8) ~~[(10)]~~ district or criminal district judge of a court in a judicial district wholly contained in a county with a population of more than one million ~~[850,000]~~ 2,000
- (9) ~~[(11)]~~ judge, statutory county court, other than a judge specified by Subdivision (10) ~~[(12)]~~ 1,200
- (10) ~~[(12)]~~ judge of a statutory county court in a county with a population of more than one million ~~[850,000]~~ 2,000
- (11) ~~[(13)]~~ district attorney, criminal district attorney, or county attorney performing the duties of a district attorney 1,000
- (12) ~~[(14)]~~ county commissioner or judge, constitutional county court:

- (A) county with a population of 200,000 or more 1,000
- (B) county with a population of under 200,000 600
- (13) ~~[(15)]~~ justice of the peace or constable:
 - (A) county with a population of 200,000 or more 800
 - (B) county with a population of under 200,000 300
- (14) ~~[(16)]~~ county surveyor, inspector of hides and animals, or public weigher 50
- (15) ~~[(17)]~~ office of the county government for which this schedule does not otherwise prescribe a fee 600

SECTION ____ . Chapter 202, Election Code, is amended by amending Section 202.002 and by adding Section 202.008 to read as follows:

Sec. 202.002. VACANCY FILLED AT GENERAL ELECTION. (a) If a vacancy occurs on or before the 65th day before the date of the general election for state and county officers, including the nonpartisan judicial election, held in the next-to-last even-numbered year of a term of office, the remainder of the unexpired term shall be filled at the next such general election ~~[for state and county officers]~~, as provided by this chapter.

(b) If a vacancy occurs after the 65th day before the applicable [a] general election day, an election for the unexpired term may not be held at that general election. The appointment to fill the vacancy continues until the next succeeding applicable general election and until a successor has been elected and has qualified for the office.

Sec. 202.008. FILING DEADLINE FOR APPLICATION OF NONPARTISAN JUDICIAL CANDIDATE. (a) If a vacancy in a nonpartisan judicial office occurs on or before the 10th day before the date of the regular deadline for filing an application for a place on the nonpartisan judicial election ballot, an application for the unexpired term must be filed by the regular filing deadline.

(b) If the vacancy occurs after the 10th day before the date of the regular filing deadline, an application for the unexpired term must be filed not later than 5 p.m. of the 15th day after the date the vacancy occurs or 5 p.m. of the 60th day before election day, whichever is earlier.

(c) The filing fee or petition requirements for a candidate for an unexpired term are the same as for a candidate for a full term.

SECTION _____. Each supreme court justice, court of criminal appeals judge, and court of appeals justice in office on the effective date of this Act, unless otherwise removed as provided by law, continues in office for the term to which elected or for the period for which appointed, as applicable.

The amendment was read.

Senator Duncan offered the following amendment to Floor Amendment No. 3:

Floor Amendment No. 4

Amend Floor Amendment No. 3 to **CSHB 331** by striking it in its entirety and substitute the following:

SECTION 1. Chapter 22, Government Code, is amended by adding Subchapter E to read as follows:

**SUBCHAPTER E. APPOINTMENT, ELECTION,
AND RETENTION OF JUSTICES AND JUDGES**

Sec. 22.401. ELECTION AND RETENTION CYCLE. (a) An appellate justice or judge is subject to partisan election in accordance with the applicable provisions of the Election Code at the last general election for state and county officers to be held before the date the justice's or judge's initial appointed term expires.

(b) In conjunction with the last general election for state and county officers to be held before the end of a term of office to which a justice or judge is elected, and in conjunction with the last general election to be held before the end of each following continuous term in that office, the justice or judge is subject to retention or rejection at the nonpartisan judicial retention election in accordance with Chapter 291, Election Code.

(c) If a justice or judge does not seek retention, or withdraws from the retention election, as provided by Chapter 291, Election Code, the vacancy existing at the beginning of the succeeding term shall be filled in the manner prescribed by the Texas Constitution.

(d) If a vacancy occurs in the office of a justice or judge seeking retention and the justice's or judge's name is omitted from the retention election ballot under Chapter 291, Election Code, the vacancy shall be filled in the manner prescribed by the Texas Constitution.

Sec. 22.402. EFFECT OF RETENTION VOTE. (a) If a majority of the votes received on the question are for the retention of the justice or judge, the person is entitled to remain in office for a regular term of six years beginning on the first day of the following January, unless the person becomes ineligible or is removed as provided by law.

(b) If less than a majority of the votes received on the question are for retention, a vacancy in the office exists on the first day of the following January, and the vacancy shall be filled in the manner prescribed by the Texas Constitution.

(c) If the name of a justice or judge seeking retention appears on the retention election ballot under Chapter 291, Election Code, although a vacancy has occurred in the office, the retention election for that office has no effect, and the vacancy shall be filled in the manner prescribed by the Texas Constitution.

SECTION 2. Section 41.002, Election Code, is amended to read as follows:

Sec. 41.002. GENERAL ELECTION FOR STATE AND COUNTY OFFICERS. The general election for state and county officers, including the nonpartisan judicial retention election, shall be held on the first Tuesday after the first Monday in November in even-numbered years.

SECTION 3. The Election Code is amended by adding Title 17 to read as follows:

TITLE 17. NONPARTISAN JUDICIAL RETENTION ELECTIONS
CHAPTER 291. RETENTION ELECTION

Sec. 291.001. DECLARATION OF CANDIDACY. (a) Not later than 5 p.m. on June 1 preceding the nonpartisan judicial retention election at which the justice or judge is subject to retention or rejection, a justice or judge who seeks to continue to serve in that office must file with the secretary of state a declaration of candidacy to succeed to the next term.

(b) A declaration may not be filed earlier than the 30th day before the date of the filing deadline. A declaration filed by mail is considered to be filed at the time of its receipt by the appropriate authority.

(c) The filling of the office for which a declaration of candidacy is not filed is covered by Chapter 22, Government Code.

Sec. 291.002. Withdrawal, Death, or Ineligibility. (a) With respect to withdrawal, death, or ineligibility of a candidate in a retention election, this section supersedes Subchapter A, Chapter 145, to the extent of any conflict.

(b) A candidate may not withdraw from the retention election after the 65th day before election day.

(c) A withdrawal request must be filed with the authority with whom the withdrawing candidate's declaration of candidacy is required to be filed.

(d) A candidate's name shall be omitted from the retention election ballot if the candidate withdraws, dies, or is declared ineligible on or before the 65th day before election day.

(e) If a candidate who has made a declaration of candidacy that complies with the applicable requirements dies or is declared ineligible after the 65th day before election day, the candidate's name shall be placed on the retention election ballot.

(f) The filling of the office following implementation of Subsection (d) or (e) is covered by Chapter 22, Government Code.

Sec. 291.003. Certification of Names for Placement on Retention Election Ballot. (a) Except as provided by Subsection (c), the secretary of state shall certify in writing for placement on the retention election ballot the name of each candidate who files with the secretary a declaration of candidacy that complies with Section 291.001.

(b) Not later than the 55th day before election day, the secretary of state shall deliver the certification to the authority responsible for having the official ballot prepared in each county in which the candidate's name is to appear on the ballot.

(c) A candidate's name may not be certified if, before delivering the certification, the secretary of state learns that the name is to be omitted from the ballot under Section 291.002.

Sec. 291.004. Retention Election Ballot. The name of the person subject to retention or rejection shall be submitted to the voters on the nonpartisan judicial retention election ballot following the offices subject to election under the heading "Retention of Nonpartisan Judicial Offices," in substantially the following form:

"Shall (Justice or Judge)

be retained in office as (justice or judge) of the
(name of court) ?"

"Yes"

"No"

Sec. 291.005. General Procedure for Conduct of Retention Election. (a) Except as otherwise provided by this code, the retention election shall be conducted and the results canvassed, tabulated, and reported in the manner applicable to partisan offices in the general election for state and county officers.

(b) A certificate of election shall be issued to a retained officer in the same manner as provided for a candidate elected to the office.

Sec. 291.006. WRITE-IN VOTING PROHIBITED. Write-in voting is not permitted in a retention election.

Sec. 291.007. Political Contributions and Expenditures. A candidate for retention of a judicial office is subject to Title 15 and shall comply with that title in the same manner as a candidate for election to the office.

Sec. 291.008. Applicability of Other Parts of Code. The other titles of this code apply to a retention election under this chapter except provisions that are inconsistent with this title or that cannot feasibly be applied in a retention election.

Sec. 291.009. Additional Procedures. The secretary of state shall prescribe any additional procedures necessary for the orderly and proper administration of retention elections held under this chapter.

SECTION 4. Section 1.005, Election Code, is amended by amending Subdivisions (9) and (20) and adding Subdivisions (25), (26), and (27) to read as follows:

(9) "Independent candidate" means a candidate in a nonpartisan election or a candidate in a partisan election who is not the nominee of a political party. The term does not include a nonpartisan judicial candidate.

(20) "Straight-party vote" means a vote by a single mark, punch, or other action by the voter for all the nominees of one political party, except nominees for partisan appellate and district court offices, and for no other candidates.

(25) "Nonpartisan judicial retention election" means an election held under Title 17.

(26) "Nonpartisan judicial candidate" means a candidate in a nonpartisan judicial retention election.

(27) "Partisan appellate or district court office" means an office listed in Section 52.092(g).

SECTION 5. Section 52.065, Election Code, is amended by adding Subsection (f) to read as follows:

(f) Partisan appellate and district court offices shall appear on the ballot in the same format as the other offices but under the heading "Partisan Appellate and District Court Offices" after the listing of the other offices.

SECTION 6. Section 52.066, Election Code, is amended by adding Subsection (e) to read as follows:

(e) Partisan appellate and district court offices shall appear on the ballot in the same format as the other offices but under the heading "Partisan Appellate and District Court Offices" after the listing of the other offices.

SECTION 7. Subchapter C, Chapter 52, Election Code, is amended by adding Section 52.0661 to read as follows:

Sec. 52.0661. SEPARATE LISTING OF UNOPPOSED PARTISAN APPELLATE AND DISTRICT COURT CANDIDATES. (a) Any unopposed candidates for partisan appellate or district court offices shall be listed separately on the ballot under the heading "Uncontested Partisan Appellate and District Court Races" following the contested races for those offices.

(b) In the general election for state and county officers, the party alignment of each unopposed candidate for an office covered by this section shall be indicated next to the candidate's name.

(c) The secretary of state shall prescribe any procedures or instructions necessary to implement this section.

SECTION 8. Subsection (b), Section 52.070, Election Code, is amended to read as follows:

(b) Immediately below "OFFICIAL BALLOT[;]" and "Partisan Appellate and District Court Offices," if applicable, the following instruction shall be printed: "Vote for the candidate of your choice in each race by placing an 'X' in the square beside the candidate's name."

SECTION 9. Section 52.071, Election Code, is amended to read as follows:

Sec. 52.071. VOTING SQUARE AND INSTRUCTION FOR STRAIGHT-PARTY VOTE. (a) On a ballot on which a party column appears

~~in connection with offices other than partisan appellate or district court offices~~, a square larger than the square prescribed by Section 52.070(a) shall be printed to the left of each political party's name.

(b) The following instruction shall be added to the instruction required by Section 52.070(b) ~~in connection with offices other than partisan appellate or district court offices~~: "You may cast a straight-party vote (that is, cast a vote for all the nominees of one party, ~~except nominees for partisan appellate or district court offices~~) by placing an 'X' in the square beside the name of the party of your choice. If you cast a straight-party vote ~~for all the nominees of one party~~ and also cast a vote for an opponent of one of that party's nominees, your vote for the opponent will be counted as well as your vote for all the other nominees of the party for which the straight-party vote was cast."

SECTION 10. Section 52.092, Election Code, is amended by amending Subsections (a), (c), (d), and (g) through (j) and adding Subsections (k) and (l) to read as follows:

(a) For an election at which offices regularly filled at the general election for state and county officers, ~~including the nonpartisan judicial retention election~~, are to appear on the ballot, the offices shall be listed in the following order:

- (1) offices of the federal government;
- (2) offices of the state government:
 - (A) statewide offices;
 - (B) district offices;
- (3) offices of the county government:
 - (A) county offices;
 - (B) precinct offices.

(c) Statewide offices of the state government shall be listed in the following order:

- (1) governor;
- (2) lieutenant governor;
- (3) attorney general;
- (4) comptroller of public accounts;
- (5) ~~state treasurer;~~
- ~~[(6)]~~ commissioner of the General Land Office;
- ~~[(6)]~~~~[(7)]~~ commissioner of agriculture;
- ~~[(7)]~~~~[(8)]~~ railroad commissioner[;];
- ~~[(9)]~~ ~~chief justice, supreme court;~~
- ~~[(10)]~~ ~~justice, supreme court;~~
- ~~[(11)]~~ ~~presiding judge, court of criminal appeals;~~
- ~~[(12)]~~ ~~judge, court of criminal appeals].~~

(d) District offices of the state government shall be listed in the following order:

- (1) member, State Board of Education;
- (2) state senator;
- (3) state representative;
- (4) ~~chief justice, court of appeals;~~
- ~~[(5)]~~ ~~justice, court of appeals;~~
- ~~[(6)]~~ ~~district judge;~~

- ~~[(7) criminal district judge;~~
- ~~[(8) family district judge;~~
- ~~[(9)] district attorney;~~
- ~~(5)[(4)] criminal district attorney.~~

(g) Partisan appellate and district court offices shall be listed in the following order:

- (1) chief justice, supreme court;
- (2) justice, supreme court;
- (3) presiding judge, court of criminal appeals;
- (4) judge, court of criminal appeals;
- (5) chief justice, court of appeals;
- (6) justice, court of appeals;
- (7) district judge;
- (8) criminal district judge;
- (9) family district judge.

(h) The nonpartisan judicial offices shall be listed in the following order:

- (1) chief justice, supreme court;
- (2) justice, supreme court;
- (3) presiding judge, court of criminal appeals;
- (4) judge, court of criminal appeals;
- (5) chief justice, court of appeals;
- (6) justice, court of appeals.

(i) If two or more offices having the same title except for a place number or other distinguishing number are to appear on the ballot, the number shall appear as part of the office title and the offices shall be listed in numerical order.

~~(j)[(h)]~~ The secretary of state shall assign a place number to each position to be filled at the general election for state and county officers, or to each position for which a retention election is to be held, for ~~[each full or unexpired term in]~~ the following offices:

- (1) justice, supreme court;
- (2) judge, court of criminal appeals; and
- (3) justice, court of appeals in a court having a membership in excess of three, if distinguishing the positions to be filled is necessary.

~~(k)[(i)]~~ The secretary of state shall designate the position of new offices on the ballot.

~~(l)[(j)]~~ The office of judge of a multicounty statutory county court created under Subchapter D, Chapter 25, Government Code, is considered to be a county office for purposes of listing the office on the ballot and to be a district office for all other purposes under this code.

SECTION 11. Subsections (b) and (c), Section 65.007, Election Code, are amended to read as follows:

(b) Except as provided by Subsection (c) or (d), each straight-party vote shall be tallied for the party receiving the vote instead of being tallied for the individual candidates of the party. The total number of straight-party votes tallied for each party shall be added to the total votes received for each of the party nominees individually, except nominees for partisan appellate or district court offices.

(c) If a ballot indicates a straight-party vote and a vote for an opponent of one or more of that party's nominees, a vote shall be counted for the opponent and for each of the party's other nominees, except nominees for partisan appellate or district court offices, whether or not any of those nominees have received individual votes.

SECTION 12. Subchapter A, Chapter 124, Election Code, is amended by amending Section 124.003 and adding Section 124.0031 to read as follows:

Sec. 124.003. Separate Listing of Unopposed Candidates[~~;-Bloc Voting~~].

(a) Any unopposed candidates, except candidates for partisan appellate or district court offices, may be listed separately under the heading "Uncontested Races" on a voting system ballot or ballot label.

(b) In an election in which the ballots indicate political party alignment, the party alignment of the candidates listed under the uncontested races heading shall be indicated next to the candidate's name.

(c) Candidates listed under the uncontested races heading may be arranged in a manner requiring voting on them as one or more groups [~~bloes~~], but only if an additional ballot or ballot label would otherwise be necessary to accommodate all the candidates and propositions to be listed.

(d) The requirement that the ballot or ballot label be arranged to permit straight-party voting does not apply to candidates listed under the uncontested races heading.

Sec. 124.0031. SEPARATE LISTING OF UNOPPOSED PARTISAN APPELLATE AND DISTRICT COURT CANDIDATES. Candidates listed under the uncontested partisan appellate and district court races heading may be arranged in a manner requiring voting on them as one or more groups, but only if an additional ballot or ballot label would otherwise be necessary to accommodate all the candidates and propositions to be listed.

SECTION 13. Subsection (b), Section 124.061, Election Code, is amended to read as follows:

(b) A punch-card ballot label may comprise as many separate sheets as are necessary to list the candidates and propositions stating measures to be voted on in an election. If more than one sheet is used, the first sheet of the sequence must [~~shall~~] indicate the fact that the ballot is continued on one or more additional sheets and must indicate the sheet on which the listing of partisan appellate and district court offices, if any, begins. Sheets in the same sequence may be identified by any method that will facilitate voting or ballot processing and not confuse the voters.

SECTION 14. Subsection (a), Section 124.063, Election Code, is amended to read as follows:

(a) An electronic system ballot on which a voter indicates a vote by punching a hole in the ballot must contain the following instruction if candidates are to be voted on: "Vote for the candidate of your choice in each race by making a punch hole in the space provided adjacent to the name of that candidate." The ballot must contain the same instruction in conjunction with any partisan appellate or district court offices appearing on the ballot. If a proposition appears on the ballot, the ballot must contain the following instruction: "Make a punch hole in the space provided beside the statement indicating the way you desire to vote."

SECTION 15. Subsection (b), Section 145.003, Election Code, is amended to read as follows:

(b) A candidate in the general election for state and county officers, including the nonpartisan judicial retention election, may be declared ineligible before the 30th day preceding election day by:

(1) the party officer responsible for certifying the candidate's name for placement on the general election ballot, in the case of a candidate who is a political party's nominee; or

(2) the authority with whom the candidate's application for a place on the ballot or declaration of candidacy is required to be filed, in the case of an independent candidate or a nonpartisan judicial candidate, as applicable.

SECTION 16. Subsection (a), Section 145.005, Election Code, is amended to read as follows:

(a) If the name of a deceased or ineligible candidate appears on the ballot [~~under this chapter~~], the votes cast for the candidate shall be counted and entered on the official election returns in the same manner as for the other candidates.

SECTION 17. Section 202.001, Election Code, is amended to read as follows:

Sec. 202.001. **APPLICABILITY OF CHAPTER.** (a) This chapter applies to elective offices of the state and county governments except the offices of state senator and state representative.

(b) This chapter does not apply to the office of justice or judge of an appellate court.

SECTION 18. (a) Each supreme court justice, court of criminal appeals judge, and court of appeals justice in office January 1, 1998, unless otherwise removed as provided by law, continues in office for the term to which elected.

(b) Each supreme court justice, court of criminal appeals judge, and court of appeals justice who is in office January 1, 1998, is subject to retention or rejection, in the manner provided by law, at the general election preceding the expiration of the regular or unexpired term for which each was elected or appointed. A vacancy does not exist in those offices until the expiration of the term of the person who held the office January 1, 1998, or until that person does not hold the office, whichever occurs first.

SECTION 19. This Act takes effect only if a constitutional amendment proposed by the 75th or 76th Legislatures, Regular Sessions, 1997 or 1999, relating to the filling by gubernatorial appointment of vacancies in the offices of appellate justices and judges, to the election and retention or rejection of those justices and judges, and to the elimination of straight party ticket voting is adopted by the voters of the State of Texas on or before December 31, 2000. If an amendment is adopted, this Act takes effect as of the effective date of that amendment.

SECTION 20. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment to Floor Amendment No. 3 was read.

On motion of Senator Duncan and by unanimous consent, Floor Amendment No. 4 was withdrawn.

Question recurring on the adoption of Floor Amendment No. 3, the amendment failed of adoption by the following vote: Yeas 10, Nays 21.

Yeas: Barrientos, Cain, Ellis, Lucio, Moncrief, Patterson, Shapleigh, Truan, West, Whitmire.

Nays: Armbrister, Bivins, Brown, Carona, Duncan, Fraser, Gallegos, Galloway, Harris, Haywood, Lindsay, Luna, Madla, Nelson, Nixon, Ogden, Ratliff, Shapiro, Sibley, Wentworth, Zaffirini.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 5

Amend **CSHB 331** by inserting appropriately numbered sections of the bill as follows and renumbering remaining sections of the bill accordingly:

SECTION __. Section 1.005, Election Code, is amended by amending Subdivision (20) and by adding Subdivision (25) to read as follows:

(20) "Straight-party vote" means a vote by a single mark, punch, or other action by the voter for all the nominees of one political party, except nominees for judicial offices, and for no other candidates.

(25) "Judicial office" means an office listed in Section 52.092(g).

SECTION __. Section 52.065, Election Code, is amended by adding Subsection (f) to read as follows:

(f) Judicial offices shall appear on the ballot in the same format as the other offices but under the heading "Judicial Offices" after the listing of the other offices.

SECTION __. Section 52.066, Election Code, is amended by adding Subsection (e) to read as follows:

(e) Judicial offices shall appear on the ballot in the same format as the other offices but under the heading "Judicial Offices" after the listing of the other offices.

SECTION __. Subchapter C, Chapter 52, Election Code, is amended by adding Section 52.0661 to read as follows:

Sec. 52.0661. SEPARATE LISTING OF UNOPPOSED JUDICIAL CANDIDATES. (a) Any unopposed candidates for judicial offices shall be listed separately on the ballot under the heading "Uncontested Judicial Races" following the contested judicial races.

(b) In the general election for state and county officers, the party alignment of each unopposed candidate for a judicial office shall be indicated next to the candidate's name.

(c) The secretary of state shall prescribe any procedures or instructions necessary to implement this section.

SECTION __. Section 52.070(b), Election Code, is amended to read as follows:

(b) Immediately below "OFFICIAL BALLOT" and "Judicial Offices," if applicable, the following instruction shall be printed: "Vote for the candidate of your choice in each race by placing an 'X' in the square beside the candidate's name."

SECTION __. Section 52.071, Election Code, is amended to read as follows:

Sec. 52.071. VOTING SQUARE AND INSTRUCTION FOR STRAIGHT-PARTY VOTE. (a) On a ballot on which a party column appears in connection with offices other than judicial offices, a square larger than the square prescribed by Section 52.070(a) shall be printed to the left of each political party's name.

(b) The following instruction shall be added to the instruction required by Section 52.070(b) in connection with offices other than judicial offices: "You may cast a straight-party vote (that is, cast a vote for all the nominees of one party, except nominees for judicial offices) by placing an 'X' in the square beside the name of the party of your choice. If you cast a straight-party vote [~~for all the nominees of one party~~] and also cast a vote for an opponent of one of that party's nominees, your vote for the opponent will be counted as well as your vote for all the other nominees of the party for which the straight-party vote was cast."

SECTION __. Section 52.092, Election Code, is amended to read as follows:

Sec. 52.092. OFFICES REGULARLY FILLED AT GENERAL ELECTION FOR STATE AND COUNTY OFFICERS. (a) For an election at which offices regularly filled at the general election for state and county officers are to appear on the ballot, the offices shall be listed in the following order:

- (1) offices of the federal government;
- (2) offices of the state government:
 - (A) statewide offices;
 - (B) district offices;
- (3) offices of the county government:
 - (A) county offices;
 - (B) precinct offices.

(b) Offices of the federal government shall be listed in the following order:

- (1) president and vice-president of the United States;
- (2) United States senator;
- (3) United States representative.

(c) Statewide offices of the state government shall be listed in the following order:

- (1) governor;
- (2) lieutenant governor;
- (3) attorney general;
- (4) comptroller of public accounts;
- (5) ~~state treasurer~~;
- ~~[(6)]~~ commissioner of the General Land Office;
- ~~(6)~~ ~~[(7)]~~ commissioner of agriculture;
- ~~(7)~~ ~~[(8)]~~ railroad commissioner[;];
- ~~[(9)]~~ ~~chief justice, supreme court~~;
- ~~[(10)]~~ ~~justice, supreme court~~;
- ~~[(11)]~~ ~~presiding judge, court of criminal appeals~~;

~~[(12) judge, court of criminal appeals].~~

(d) District offices of the state government shall be listed in the following order:

- (1) member, State Board of Education;
- (2) state senator;
- (3) state representative;
- (4) ~~[chief justice, court of appeals;~~
- ~~[(5) justice, court of appeals;~~
- ~~[(6) district judge;~~
- ~~[(7) criminal district judge;~~
- ~~[(8) family district judge;~~
- ~~[(9)] district attorney;~~
- (5) ~~[(10)] criminal district attorney.~~

(e) County offices shall be listed in the following order:

- (1) county judge;
- (2) ~~[judge, county court at law;~~
- ~~[(3) judge, county criminal court;~~
- ~~[(4) judge, county probate court;~~
- ~~[(5)] county attorney;~~
- (3) ~~[(6)] district clerk;~~
- (4) ~~[(7)] district and county clerk;~~
- (5) ~~[(8)] county clerk;~~
- (6) ~~[(9)] sheriff;~~
- (7) ~~[(10)] sheriff and tax assessor-collector;~~
- (8) ~~[(11)] county tax assessor-collector;~~
- (9) ~~[(12)] county treasurer;~~
- (10) ~~[(13)] county school trustee (county with population of two million or more);~~
- (11) ~~[(14)] county surveyor;~~
- (12) ~~[(15)] inspector of hides and animals.~~

(f) Precinct offices shall be listed in the following order:

- (1) county commissioner;
- (2) justice of the peace;
- (3) constable;
- (4) public weigher.

(g) Judicial offices shall be listed in the following order:

- (1) chief justice, supreme court;
- (2) justice, supreme court;
- (3) presiding judge, court of criminal appeals;
- (4) judge, court of criminal appeals;
- (5) chief justice, court of appeals;
- (6) justice, court of appeals;
- (7) district judge;
- (8) criminal district judge;
- (9) family district judge;
- (10) judge, county court at law;
- (11) judge, county criminal court;
- (12) judge, county probate court.

(h) [(g)] If two or more offices having the same title except for a place number or other distinguishing number are to appear on the ballot, the number shall appear as part of the office title and the offices shall be listed in numerical order.

(i) [(h)] The secretary of state shall assign a place number to each position to be filled at the general election for state and county officers for each full or unexpired term in the following offices:

- (1) justice, supreme court;
- (2) judge, court of criminal appeals; and
- (3) justice, court of appeals in a court having a membership in excess of three, if distinguishing the positions to be filled is necessary.

(j) [(i)] The secretary of state shall designate the position of new offices on the ballot.

(k) [(j)] The office of judge of a multicounty statutory county court created under Subchapter D, Chapter 25, Government Code, is considered to be a county office for purposes of listing the office on the ballot and to be a district office for all other purposes under this code.

SECTION __. Sections 65.007(b) and (c), Election Code, are amended to read as follows:

(b) Except as provided by Subsection (c) or (d), each straight-party vote shall be tallied for the party receiving the vote instead of being tallied for the individual candidates of the party. The total number of straight-party votes tallied for each party shall be added to the total votes received for each of the party nominees individually, except nominees for judicial offices.

(c) If a ballot indicates a straight-party vote and a vote for an opponent of one or more of that party's nominees, a vote shall be counted for the opponent and for each of the party's other nominees, except nominees for judicial offices, whether or not any of those nominees have received individual votes.

SECTION __. Subchapter A, Chapter 124, Election Code, is amended by amending Section 124.003 and by adding Section 124.0031 to read as follows:

Sec. 124.003. SEPARATE LISTING OF UNOPPOSED CANDIDATES[; ~~Bloc Voting~~]. (a) Any unopposed candidates, except candidates for judicial offices, may be listed separately under the heading "Uncontested Races" on a voting system ballot or ballot label.

(b) In an election in which the ballots indicate political party alignment, the party alignment of the candidates listed under the uncontested races heading shall be indicated next to the candidate's name.

(c) Candidates listed under the uncontested races heading may be arranged in a manner requiring voting on them as one or more groups [bloes], but only if an additional ballot or ballot label would otherwise be necessary to accommodate all the candidates and propositions to be listed.

(d) The requirement that the ballot or ballot label be arranged to permit straight-party voting does not apply to candidates listed under the uncontested races heading.

Sec. 124.0031. SEPARATE LISTING OF UNOPPOSED JUDICIAL CANDIDATES. Candidates listed under the uncontested judicial races heading may be arranged in a manner requiring voting on them as one or more

groups, but only if an additional ballot or ballot label would otherwise be necessary to accommodate all the candidates and propositions to be listed.

SECTION ____ . Section 124.061(b), Election Code, is amended to read as follows:

(b) A punch-card ballot label may comprise as many separate sheets as are necessary to list the candidates and propositions stating measures to be voted on in an election. If more than one sheet is used, the first sheet of the sequence must ~~shall~~ indicate the fact that the ballot is continued on one or more additional sheets and must indicate the sheet on which the listing of judicial offices, if any, begins. Sheets in the same sequence may be identified by any method that will facilitate voting or ballot processing and not confuse the voters.

SECTION ____ . Section 124.063(a), Election Code, is amended to read as follows:

(a) An electronic system ballot on which a voter indicates a vote by punching a hole in the ballot must contain the following instruction if candidates are to be voted on: "Vote for the candidate of your choice in each race by making a punch hole in the space provided adjacent to the name of that candidate." The ballot must contain the same instruction in conjunction with any judicial offices appearing on the ballot. If a proposition appears on the ballot, the ballot must contain the following instruction: "Make a punch hole in the space provided beside the statement indicating the way you desire to vote."

ELLIS
PATTERSON

The amendment was read.

On motion of Senator Ellis and by unanimous consent, Floor Amendment No. 5 was withdrawn.

Senator Duncan offered the following amendment to the bill:

Floor Amendment No. 6

Amend **CSHB 331**, by inserting the following new SECTIONS in the appropriate location and renumbering as appropriate:

SECTION ____ . Section 255.007, Election Code, is amended to read as follows:

Sec. 255.007. NOTICE REQUIREMENT ON POLITICAL ADVERTISING SIGNS. (a) The following notice must be written on each political advertising sign:

"NOTICE: IT IS A VIOLATION OF STATE LAW (CHAPTERS 392 AND 393, TRANSPORTATION CODE) ~~[(ARTICLE 2372cc, VERNON'S TEXAS CIVIL STATUTES, AND ARTICLE 6674v-7, REVISED STATUTES)]~~, TO PLACE THIS SIGN IN THE RIGHT-OF-WAY OF A HIGHWAY."

(b) A person commits an offense if the person:

(1) knowingly enters into a contract to print or make a political advertising sign that does not contain the notice required by Subsection (a); or

(2) instructs another person to place a political advertising sign that does not contain the notice required by Subsection (a).

(c) An offense under this section is a Class C misdemeanor.

(d) It is an exception to the application of Subsection (b) that the political advertising sign was printed or made before September 1, 1997, and complied with Subsection (a) as it existed immediately before that date.

(e) In this section, "political advertising sign" means a written form of political advertising designed to be seen from a road but does not include a bumper sticker.

The amendment was read and was adopted by a viva voce vote.

CSHB 331 as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 331 ON THIRD READING

Senator Madla moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 331** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

CSHB 331 was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Gallegos asked to be recorded as voting "Nay" on the final passage of the bill.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
Friday, May 23, 1997

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HCR 249, Honoring the members of the 533rd Anti-aircraft Battalion on the occasion of their 18th reunion.

HCR 261, Honoring the late Bill Boyd on his induction into the Texas Western Swing Hall of Fame.

HCR 264, In memory of Sergeant Millard "Dee" Campbell.

HCR 267, Congratulating Pete and Elena Gallego on the occasion of their 50th wedding anniversary.

HCR 269, Commending the Texas Department of Public Safety for its effective handling of the Republic of Texas incident in Fort Davis.

HCR 272, Designating June 9, 1997, International Space University Day in the State of Texas.

HCR 274, Recognizing the Tarrant County Employment Network for its service to the citizens of Tarrant County.

HCR 277, Congratulating Willie Lee Campbell Glass on her receipt of an Iowa State University alumni award.

HCR 280, Commemorating the birth of Tiffany Sheree Satterwhite.

HCR 293, Instructing the enrolling clerk of the House of Representatives to correct technical errors in H.B. 1145.

SCR 88, Recognizing Sabrina McAfee as a most distinguished Texas heroine.

SCR 97, Congratulating the Robert E. Lee High School Class of 1997.

SCR 98, Congratulating the City of Georgetown on its designation as a 1997 Great American Main Street City.

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

BILLS AND RESOLUTIONS SIGNED

The President announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

HB 767, HB 993, HB 1170, HB 1327, HB 1507, HB 1585, HB 1645, HB 1779, HB 1990, HB 2215, HB 2556, HB 2703, HB 2778, HB 2825, HB 2848, HCR 240, HCR 241

HOUSE BILL 724 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 724, Relating to transfers of contributions to the optional retirement program for faculty members of institutions of higher education.

The bill was read second time.

Senator Barrientos offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 724** as follows:

(1) On page 1, line 17, immediately following "from the comptroller." insert the following:

"This subsection does not apply to a supplemental payroll. This subsection applies only to a currently authorized company or a company with at least 50 participants at the institution."

(2) On page 1, line 22, insert "if the institution is currently able to send funds by electronic transfer" immediately following "transfer"

The committee amendment was read and was adopted by a viva voce vote.

Senator Barrientos offered the following committee amendment to the bill:

Committee Amendment No. 2

Amend **HB 724** as follows:

On page 2, line 2, insert the following new subsection (f) and reletter the remaining subsection accordingly:

(f) The company shall allocate and credit the contemporaneous deposit to each participant's account on the receipt of the electronic funds transfer and the electronic information on the amount to be allocated and credited to each participant's account. A company who violates this section shall become ineligible for certification as a company eligible to provide an optional retirement program.

The committee amendment was read and was adopted by a viva voce vote.

HB 724 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 724 ON THIRD READING

Senator Barrientos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 724** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

HB 724 was read third time and was passed by a viva voce vote.

SENATE RESOLUTION 829

Senator Wentworth offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 75th Legislature, Regular Session, 1997, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **SB 99** to consider and take action on the following specific matters:

1. Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter that is not included in Section 661.003, Transportation Code, as amended by either the house or senate version of the bill. The added text reads as follows:

(c) It is an exception to the application of Subsection (a) or (b) [a defense to prosecution under this section] that at the time the offense was committed, the person required to wear protective headgear[+:

[(+)] was at least 21 [+8] years old[;] and had successfully completed a motorcycle operator training and safety course under Chapter 662 or was covered by a health insurance plan providing the person with at

least \$10,000 in medical benefits for injuries incurred as a result of an accident while operating or riding on a motorcycle ~~[(2) presented a medical exemption complying with Subsection (d) to the peace officer who arrested the person].~~

(d) The Department of Public Safety shall issue a sticker to a person who:

(1) applies to the department on a form provided by the department;

(2) provides the department with evidence satisfactory to the department showing that the person:

(A) is the owner of a motorcycle that is currently registered in this state; and

(B) has successfully completed the training and safety course described by Subsection (c) or has the insurance coverage described by that subsection; and

(3) pays a fee of \$5 for the sticker ~~[Only a practicing physician licensed by the Texas State Board of Medical Examiners may issue a medical exemption and the physician may issue the medical exemption only to a person who has an acute head or facial injury that would be worsened if the person wore protective headgear. The medical exemption must be on a form prescribed by the department and expires on the 10th day after the date it is issued].~~

(e) A person may apply to the Department of Public Safety for a sticker for each motorcycle owned by the applicant.

(f) A sticker issued by the Department of Public Safety under Subsection (d) expires on the third anniversary of the date of issuance.

(g) A person operating or riding as a passenger on a motorcycle that displays on the license plate of the motorcycle or the license plate mounting bracket a sticker issued by the Department of Public Safety under Subsection (d) is presumed to have successfully completed the training and safety course described by Subsection (c) or to have the insurance coverage described by that subsection.

EXPLANATION: This addition is necessary to:

(1) provide as an alternative to the requirement that a person 21 years of age or older be covered by a health insurance plan that the person have completed a motorcycle operator training and safety course approved by the Department of Public Safety; and

(2) provide for the issuance of a sticker by the Department of Public Safety to a qualified individual for display on the person's motorcycle and for the creation of a presumption that the person operating a motorcycle that displays the sticker has the required insurance or has completed the motorcycle training and safety course.

The resolution was read and was adopted by the following vote:
Yeas 26, Nays 5.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Galloway, Harris, Haywood, Lindsay, Lucio, Madla, Nelson, Nixon, Patterson, Shapiro, Shapleigh, Sibley, Truan, Wentworth, West, Whitmire, Zaffirini.

Nays: Gallegos, Luna, Moncrief, Ogden, Ratliff.

HOUSE BILL 2472 ON SECOND READING

On motion of Senator Moncrief and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2472, Relating to the reporting of certain injuries to the Texas Department of Health.

The bill was read second time.

Senator Moncrief offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 2472** as follows:

On page 1, line 21, delete the underlined colon.

On page 1, line 22, delete the underlined (1) and the underlined "; and"

On page 1, lines 23-24, delete the underlined language.

On page 3, line 19, delete "notwithstanding" and substitute "to the extent allowed by"

On page 3, line 22, add and after the semicolon

The committee amendment was read and was adopted by a viva voce vote.

HB 2472 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2472 ON THIRD READING

Senator Moncrief moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2472** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

HB 2472 was read third time and was passed by a viva voce vote.

HOUSE BILL 2493 ON SECOND READING

On motion of Senator Shapleigh and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2493, Relating to accessibility by persons with mobility impairments to buildings leased by or built for the state.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2493 ON THIRD READING

Senator Shapleigh moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2493** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

HB 2493 was read third time and was passed by a viva voce vote.

HOUSE BILL 793 ON SECOND READING

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 793, Relating to notice that entry on property is forbidden for the purpose of prosecuting the offense of trespass.

The bill was read second time.

Senator Harris offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 793**, in **SECTION 1** of the bill, in amended Section 30.05(b)(2), (Senate committee printing, page 1, lines 22-35), by striking Paragraph (D) and substituting the following:

(D) the placement of:
 (i) identifying purple paint marks on trees or posts on the property, provided that the marks are:
 (a) vertical lines of not less than eight inches in length and not less than one inch in width;
 (b) placed so that the bottom of the mark is not less than three feet from the ground or more than five feet from the ground; and
 (c) placed at locations that are readily visible to any person on the property and no more than:
 (1) 100 feet apart on forest land; or
 (2) 1,000 feet apart on land other than forest land; and
 (ii) a sign at each entrance for vehicles to the property that is not less than two feet by three feet in size with block letters at least two inches in height, and that gives notice that the presence of purple paint marks on trees or posts on the property indicates that entry is forbidden; or

The amendment was read and was adopted by a viva voce vote.

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 2

Amend **HB 793** by adding a new **SECTION**, appropriately numbered, to read as follows:

SECTION ____. Amend Section 30.05, Penal Code, by adding a new Subsection (e) to read as follows:

(e) It is a defense to prosecution under this section if the charging instrument alleges that the actor received notice in the manner described by (b)(2)(D) and:

 i. the actor at the time of the offense suffered from a disease or defect that made the defendant unable to distinguish colors; or

ii. the actor, in good faith, thought the purple paint was plum or lavender.

The amendment was read.

On motion of Senator Shapleigh and by unanimous consent, Floor Amendment No. 2 was withdrawn.

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 3

Amend **HB 793** by adding a new SECTION, appropriately numbered, to read as follows:

SECTION __. Amend Section 30.05, Penal Code, by adding a new Subsection (e) to read as follows:

(e) It is a defense to prosecution under this section if the charging instrument alleges that the actor received notice in the manner described by (b)(2)(D) and the actor at the time of the offense suffered from a disease or defect that made the defendant unable to distinguish colors.

The amendment was read and failed of adoption by the following vote: Yeas 12, Nays 19.

Yeas: Barrientos, Ellis, Gallegos, Lucio, Luna, Madla, Shapleigh, Truan, Wentworth, West, Whitmire, Zaffirini.

Nays: Armbrister, Bivins, Brown, Cain, Carona, Duncan, Fraser, Galloway, Harris, Haywood, Lindsay, Moncrief, Nelson, Nixon, Ogden, Patterson, Ratliff, Shapiro, Sibley.

HB 793 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 793 ON THIRD READING

Senator Harris moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 793** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

HB 793 was read third time and was passed by a viva voce vote.

HOUSE BILL 3197 ON SECOND READING

On motion of Senator Moncrief and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 3197, Relating to utilization review of certain health care services provided to a person who sustains a compensable injury.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 3197 ON THIRD READING

Senator Moncrief moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3197** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

HB 3197 was read third time and was passed by a viva voce vote.

HOUSE BILL 951 ON SECOND READING

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 951, Relating to the Texas open records law.

The bill was read second time.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 951** in SECTION 3 of the bill, by striking the last sentence of amended Section 552.301(a), Government Code, and substituting "For purposes of this subchapter, a written request includes a request made in writing that is sent to the officer for public information, or the person designated by that officer, by electronic mail or facsimile transmission." (Senate committee printing, page 4, lines 46-50).

The amendment was read and was adopted by a viva voce vote.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 2

Amend **HB 951** as follows:

(1) Add the following appropriately numbered SECTION to the bill and renumber existing SECTIONS of the bill appropriately:

SECTION ____ Section 552.221(d), Government Code, is amended to read as follows:

(d) If an officer for public information cannot produce public information for inspection or duplication within 10 ~~business~~ ~~calendar~~ days after the date the information is requested under Subsection (a), the officer shall certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.

(2) In the prefatory language to SECTION 3 of the bill, strike "552.301(a)" and substitute "552.301" (Senate committee printing page 4, line 35).

(3) In SECTION 3 of the bill, immediately before the text of amended Section 552.301(a), Government Code, insert "Sec. 552.301. REQUEST FOR ATTORNEY GENERAL DECISION." (Senate committee printing page 4, line 37).

(4) In SECTION 3 of the bill, in the second sentence of amended Section 552.301(a), Government Code, strike "calendar" and substitute "business [calendar]" (senate committee printing page 4, line 45).

(5) In SECTION 3 of the bill, insert the following after the text of amended Section 552.301(a), Government Code (Senate committee printing page 4, between lines 50 and 51):

(b) A governmental body that requests an attorney general decision under Subsection (a) must within a reasonable time but not later than the 15th business [calendar] day after the date of receiving the written request:

(1) submit to the attorney general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld;

(2) submit to the attorney general a copy of the written request for information;

(3) submit to the attorney general a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested; and

(4) label that copy of the specific information, or of the representative samples, to indicate which exceptions apply to which parts of the copy.

The amendment was read and was adopted by a viva voce vote.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 3

Amend **HB 951** by adding the following appropriately numbered SECTIONS to the bill and renumbering existing SECTIONS of the bill appropriately:

SECTION ____ . Section 552.108, Government Code, is amended to read as follows:

Sec. 552.108. EXCEPTION: CERTAIN LAW ENFORCEMENT AND PROSECUTORIAL INFORMATION. (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in the presentment of an indictment or information; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; and

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in the presentment of an indictment or information; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; and

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

SECTION ____ . The change in law made by this Act to Section 552.108, Government Code, applies to information, records, and notations collected, made, assembled, or maintained on, before, or after the effective date of this Act.

The amendment was read.

Senator Wentworth offered the following amendment to Floor Amendment No. 3:

Floor Amendment No. 3A

Amend Floor Amendment No. 3 to **HB 951** as follows:

On page 1, lines 15 and 16, strike "the presentment of an indictment or information" and substitute "conviction or deferred adjudication".

On page 1, line 20, strike "and" and substitute "or".

The amendment to Floor Amendment No. 3 was read and was adopted by a viva voce vote.

Question recurring on the adoption of Floor Amendment No. 3 as amended, the amendment as amended was adopted by a viva voce vote.

HB 951 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 951 ON THIRD READING

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 951** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

HB 951 was read third time and was passed by a viva voce vote.

GUESTS PRESENTED

Senator Ogden was recognized and introduced to the Senate a group of students and their teachers from Saint Joseph School in Bryan.

Senator Ogden was again recognized and introduced to the Senate a group of eighth-grade students and their teachers and chaperones from

Saint John the Apostle School in North Richland Hills where his nephew Nicholas Buffry is a student.

The Senate welcomed its guests.

HOUSE BILL 115 ON SECOND READING

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 115, Relating to the failure of certain persons to attend a court hearing involving a child; providing a criminal penalty.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 115 ON THIRD READING

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 115** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

HB 115 was read third time and was passed by a viva voce vote.

HOUSE BILL 1596 ON SECOND READING

On motion of Senator Moncrief and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 1596, Relating to unlicensed personal care facilities.

The bill was read second time.

Senator Moncrief offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 1596** as follows:

On page 1, line 10, strike SECTION 1, insert the following, and renumber subsequent SECTIONS accordingly:

SECTION 1. Title 6, Human Resources Code, is amended by adding Chapter 105 to read as follows:

CHAPTER 105. RESIDENTIAL FACILITIES FOR THE ELDERLY

Sec. 105.001. DEFINITIONS. In this chapter:

(1) "Establishment" means a facility providing food and shelter to two or more qualifying adult residents, at least 80 percent of whom are 55 years of age or older or are disabled, and offering or providing, for a fee, one or more supportive services, whether offered or provided directly by the facility or by another entity arranged for by the facility.

(2) "Qualifying adult resident" means an adult resident of a facility who is not related within the second degree by consanguinity or affinity to:

- (A) a person who has an ownership interest in the facility; or
- (B) at least one other resident of the facility.

(3) "Supportive services" means providing, directly or indirectly, medical services, health-related services, social services, or help with personal laundry or handling or assisting with personal funds of residents, but does not include referral or information services, whether provided by a service coordinator or other employees of the establishment.

Sec. 105.002. EXEMPT FACILITIES. The following facilities are exempt from the application of this chapter:

(1) housing in which all supportive services are arranged directly by the residents themselves and are provided by outside entities;

(2) nursing facilities licensed under Chapter 242, Health and Safety Code;

(3) continuing care facilities regulated by the Texas Department of Insurance under Chapter 246, Health and Safety Code; and

(4) facilities which provide services only to persons enrolled in a program funded and monitored by a state agency in accordance with standards set by the state agency.

Sec. 105.003. DISCLOSURE REQUIRED IN CONTRACT. An establishment that is not licensed as a personal care facility under Chapter 247, Health and Safety Code, shall execute a contract with each of its residents that contains, in addition to other required information, the following elements:

(1) the name, street address, and mailing address of the establishment;

(2) the name and mailing address of at least one person authorized to act on behalf of the owner or owners or management agent of the establishment;

(3) a statement describing the licensure status of the establishment;

(4) the name and mailing address of any provider, including any individual or entity, whether licensed or not licensed, providing supportive services under an arrangement with the establishment;

(5) the term of the contract;

(6) a description of the services to be provided that are included in the base monthly rate to be paid by the resident;

(7) a description of any additional services available for an additional fee from the establishment, directly or through arrangements with the establishment;

(8) a provision requiring the establishment to provide 30 days' written notice of any change in fee schedules that outline the cost of additional services;

(9) a description of the process by which the contract may be modified, amended, or terminated;

(10) a description of the complaint resolution process available to residents;

(11) the name, street address, mailing address, and telephone number of the resident's designated representative, if any;

(12) a list of the criteria used by the establishment to determine who may not continue to reside in the building;

(13) a description of the billing and payment procedures and requirements;

(14) a statement regarding the ability and right of residents to receive services from service providers with whom the establishment does not have an arrangement; and

(15) a statement as to the life safety and fire codes met by the building and a statement as to whether the codes meet the requirements of residents who are not capable of self-evacuation.

Sec. 105.004. ADVERTISING DISCLOSURE. Any advertisement and any promotional material distributed to the public for an establishment must disclose whether or not the establishment is licensed as a personal care facility under Chapter 247, Health and Safety Code.

Sec. 105.005. REMEDIES. A resident of an establishment that has violated Section 105.003 or 105.004 may obtain or exercise one or more of the remedies available to a tenant under Section 92.205, Property Code.

SECTION 2. Subdivision (3), Section 247.002, Health and Safety Code, is amended to read as follows:

(3) "Personal care facility" means an establishment, including a board and care home, that:

(A) ~~furnishes[, in one or more facilities,] food and shelter to four or more persons who are unrelated to the proprietor of the establishment and who are residents in one or more facilities that are related by the fact that the same person has an ownership interest in each; and~~

(B) provides personal care services.

SECTION 3. Section 247.004, Health and Safety Code, is amended to read as follows:

Sec. 247.004. Exemptions. This chapter does not apply to:

(1) a boarding facility that has rooms for rent and that may offer community meals but that does not provide personal care services;

(2) an establishment conducted by or for the adherents of the Church of Christ, Scientist, for the purpose of providing facilities for the care or treatment of the sick who depend exclusively on prayer or spiritual means for healing without the use of any drug or material remedy if the establishment complies with local safety, sanitary, and quarantine ordinances and regulations; ~~or~~

(3) a facility conducted by or for the adherents of a qualified religious society classified as a tax-exempt organization under an Internal Revenue Service group exemption ruling for the purpose of providing personal care services without charge solely for the society's professed members or ministers in retirement, if the facility complies with local safety, sanitation, and quarantine ordinances and regulations; ~~or~~

(4) a facility operated by a provider that is certified by the Texas Department of Mental Health and Mental Retardation to be in compliance with standards necessary for participation in a Medicaid waiver approved by the federal government.

SECTION 4. Section 247.021, Health and Safety Code, is amended to read as follows:

Sec. 247.021. LICENSE REQUIRED. (a) A person may not establish or operate a personal care facility without possessing a license [issued] under this chapter for each such facility the person establishes or operates.

(b) The department by rule shall establish procedures to issue a six-month provisional license to existing facilities with residents. The department may issue a provisional license only if:

- (1) the facility is in compliance with resident care standards;
- (2) the facility voluntarily discloses that the facility needs additional time to comply with life safety code and physical plant standards;
- (3) the disclosure was made in writing by certified mail to the department;
- (4) an investigation of the violation was not initiated or the violation was not independently detected by the department; and
- (5) the disclosure was made promptly after knowledge of the information disclosed is obtained by the facility.

(c) If at the end of the six-month provisional license period the facility does not meet life safety code and physical plant standards, the department shall not issue a license to the facility.

SECTION 5. Subchapter B, Chapter 247, Health and Safety Code, is amended by adding Section 247.029 to read as follows:

Sec. 247.029. MUNICIPAL ENFORCEMENT. The governing body of a municipality by ordinance may:

- (1) prohibit a person who does not hold a license issued under this chapter from establishing or operating a personal care facility within the municipality; and
- (2) establish a procedure for emergency closure of a facility in circumstances in which:
 - (A) the facility is established or operating in violation of Section 247.021; and

(B) the continued operation of the facility creates an immediate threat to the health and safety of a resident of the facility.

SECTION 6. Section 247.044, Health and Safety Code, is amended by adding a new Subsection (c) and redesignating existing Subsections (c) and (d) to read as follows:

(c) The department may petition a district court for a temporary restraining order to inspect a facility allegedly required to be licensed and operating without a license when admission to the facility cannot be obtained. If it is shown that admission to the facility cannot be obtained, the court shall order the facility to allow the department admission to the facility.

(d) The attorney general or local prosecuting attorney may institute and conduct a suit authorized by this section at the request of the department.

(e) ~~(d)~~ Venue for a suit brought under this section is in the county in which the personal care facility is located or in Travis County.

SECTION 7. Section 247.045, Health and Safety Code, is amended to read as follows:

Sec. 247.045. Civil Penalties. (a) Except as provided by Subsection (b), a [A] person who violates this chapter or who fails to comply with a rule adopted under this chapter and whose violation is determined by the

department to threaten the health and safety of a resident of a personal care facility is subject to a civil penalty of not less than \$100 nor more than \$10,000 for each act of violation. Each day of a continuing violation constitutes a separate ground of recovery.

(b) A person who does not possess a license for a personal care facility as required by Section 247.021 is subject to a civil penalty of not less than \$1,000 nor more than \$10,000 for each act of violation. Each day of a continuing violation constitutes a separate ground for recovery.

(c) If the attorney general fails to take action within 30 days of referral from the department, the department shall refer the case to the local district attorney, county attorney, or city attorney. The district attorney, county attorney, or city attorney shall file suit in a district court to collect and retain the penalty.

(d) Investigation and attorney's fees may not be assessed or collected by or on behalf of the department or other state agency unless the department or other state agency assesses and collects a penalty described under this chapter.

(e) The department and attorney general, or other legal representative as described in Subsection (c), shall work in close cooperation throughout any legal proceedings requested by the department.

(f) The commissioner of human services must approve any settlement agreement to a suit brought under this chapter.

SECTION 8. Subchapter C, Chapter 247, Health and Safety Code, is amended by adding Section 247.047 to read as follows:

Sec. 247.047. AUTHORITY TO DEVELOP OTHER REMEDIES. In addition to the enforcement provisions authorized by this chapter, the department may by rule develop additional remedies necessary to ensure compliance with this chapter. The remedies must ensure quality care and protection of residents' health and safety. This section does not authorize the department to assess monetary administrative penalties.

SECTION 9. Section 2, Article 9102, Revised Statutes, is amended by adding Subsection (h) to read as follows:

(h) The standards adopted under this article do not apply to a facility in which the owner or operator of the facility is:

(1) licensed to operate the facility under Chapter 247, Health and Safety Code; and

(2) required to comply with the Americans with Disabilities Act of 1990, as amended (42 U.S.C. Section 12101 et seq.), as a condition of licensure.

SECTION 10. Chapter 102.001(4), Human Resources Code, is amended to read as follows:

(4) "Person providing services" means an individual, corporation, association, partnership, or other private or public entity providing convalescent and nursing home services, home health services, personal care services, adult foster care home services, or alternate care services.

SECTION ____ Subtitle B, Title 4, Health and Safety Code, is amended by adding Chapter 252 to read as follows:

CHAPTER 252. ADULT FOSTER CARE HOMESSec. 252.001. DEFINITIONS. In this chapter:

(1) "Adult foster care home" means an establishment that provides room and board to one or more elderly persons unrelated to the proprietor that receives reimbursement under the state Medicaid program and is not otherwise required to be licensed by this state under any other law.

(2) "Board" means the Texas Board of Human Services.

(3) "Department" means the Texas Department of Human Services.

(4) "Elderly person" means a person 65 years of age or older.

Sec. 252.002. LICENSURE REQUIRED. A person may not establish or operate an adult foster care home without a license issued under this chapter.

Sec. 252.003. LICENSE APPLICATION. (a) An applicant for an adult foster care home license must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the board.

Sec. 252.004. ISSUANCE AND RENEWAL OF LICENSE. (a) The department shall issue a license if, after inspection and investigation, it finds that the applicant and the adult foster care home meet the requirements of this chapter and the standards adopted under this chapter.

(b) A license issued under this chapter expires on the second anniversary after the date the license is issued.

(c) A license may be renewed if the license holder:

(1) submits the license renewal fee to the department; and

(2) continues to meet the requirements of this chapter.

Sec. 252.005. ADOPTION OF RULES; FEES. (a) The board shall adopt rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an adult foster care home.

(b) The department shall set fees sufficient to cover the cost of administering this chapter.

Sec. 252.006. STANDARDS. (a) The board shall by rule prescribe minimum standards to protect the health and safety of a resident of an adult foster care home.

(b) The minimum standards must:

(1) clearly differentiate an adult foster care home from other licensed institutions;

(2) ensure quality care and protection of the residents' health and safety without excessive cost;

(3) prescribe minimum fire safety and emergency standards;

(4) prescribe a limitation on the acuity levels of residents' medical conditions for continued residence in the home;

(5) require monitoring of each resident's health status and medical condition and maintenance of adequate medical records to document the resident's health status and medical condition;

(6) require adherence to minimum standards of resident rights;

(7) require reporting of situations in which there is reasonable cause to believe that abuse, neglect, mistreatment, or exploitation has occurred;

(8) require criminal history checks of each nonlicensed person who works with residents in adult foster care homes and prohibit a person convicted of any felony specified by the standards from working with a resident;

(9) prescribe minimum qualifications for an employee of an adult foster care home that require the employee to be adequately trained to meet the health care needs of and provide assistance in activities of daily living to residents of an adult foster care home; and

(10) require each employee of an adult foster care home to attend a minimum number of hours of continuing education in subjects related to the care of elderly persons.

Sec. 252.007. INSPECTIONS. The department, with assistance from the Texas Department on Aging, may inspect an adult foster care home at reasonable times as necessary to assure compliance with this chapter.

Sec. 252.008. ASSISTANCE BY DEPARTMENT. The department, with assistance from the Texas Department on Aging, may provide assistance to an adult foster care home provider, including the provision of training materials, the coordination of training conferences and workshops with other state agencies, and the development of a provider's handbook explaining the rules governing adult foster care homes.

Sec. 252.009. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. The department, after providing notice and opportunity for a hearing to the applicant or license holder, may deny, suspend, or revoke a license if the department finds that the applicant or license holder has substantially failed to comply with the requirements established under this chapter. The denial, suspension, or revocation of a license by the department and an appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Sec. 252.010. EMERGENCY SUSPENSION OR CLOSING ORDER. (a) The department shall suspend an adult foster care home's license or order an immediate closing of the adult foster care home if:

(1) the department finds the institution is operating in violation of the standards prescribed by this chapter; and

(2) the violation creates an immediate threat to the health and safety of a resident.

(b) An order under Subsection (a) suspending a license or ordering the immediate closing of an adult foster care home is immediately effective on the date on which the license holder receives written notice or on the date specified in the order.

(c) An order suspending the license or ordering closure of an adult foster care home is valid for 10 days after its effective date.

(d) The department by rule shall provide for the relocation of residents from an adult foster care home that is closed or whose license is suspended.

SECTION 11. (a) The change in law made by this Act applies only to a violation committed on or after the effective date of this Act. For the purposes of this section, a violation is committed before the effective date of this Act if any element of the violation occurs before that date.

(b) A violation committed before the effective date of this Act is covered by the law in effect when the violation was committed and the former law is continued in effect for this purpose.

SECTION. 12. (a) Except as provided by subsection (b) of this section, this Act takes effect September 1, 1997.

(b) Section 252.002, Health and Safety Code, as added by this Act, takes effect January 1, 1998.

The amendment was read and was adopted by a viva voce vote.

HB 1596 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1596 ON THIRD READING

Senator Moncrief moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1596** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

HB 1596 was read third time and was passed by the following vote: Yeas 31, Nays 0.

COMMITTEE SUBSTITUTE HOUSE BILL 670 ON SECOND READING

On motion of Senator Nelson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

CSHB 670, Relating to the appraisal of property for ad valorem tax purposes.

The bill was read second time.

Senator Patterson offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 670** by striking all below the enacting clause and substituting the following:

SECTION 1. Section 6.025, Tax Code, is amended by amending Subsection (c) and adding Subsections (d) and (e) to read as follows:

(c) The chief appraisers of appraisal districts described by Subsection (a) shall ~~[to the extent practicable]~~ coordinate their appraisal activities so as to ~~[encourage and]~~ facilitate the appraisal of the same property appraised by each district at the same value.

(d) If a chief appraiser approves an application for a residence homestead exemption under Section 11.13 or an application under that section for a residence homestead exemption for an individual who is disabled or 65 years of age or older, the chief appraiser of every other appraisal district in which the property is located shall recognize that exemption and enter the exemption on the appraisal rolls of the appraisal district.

(e) If on May 1 all the chief appraisers of the appraisal districts described by Subsection (a) in which a parcel or item of property is located are not in

agreement as to the appraised value of the property, on that date each of the chief appraisers shall enter as the value of the property on the appraisal records of the appropriate appraisal district the value that is calculated by:

(1) adding the appraised value of the property as determined by each chief appraiser; and

(2) dividing the sum of those appraised values by the number of appraisal districts in which the property is located.

(f) The owner of property for which the appraised value is determined under Subsection (e) is entitled to file a protest in relation to the property with the appraisal review board of any appraisal district in which the property is located. If the appraisal review board or a court on appeal of the protest determines a different appraised value for the property pursuant to the protest or appeal, the chief appraiser of every appraisal district in which the property is located shall enter that appraised value of the property on the appraisal records of the appraisal district.

SECTION 2. This Act takes effect January 1, 1998, and applies only to a tax year that begins on or after that date.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted by a viva voce vote.

CSHB 670 as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 670 ON THIRD READING

Senator Nelson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that CSHB 670 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

CSHB 670 was read third time and was passed by a viva voce vote.

HOUSE BILL 3019 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 3019, Relating to permit exemptions under the Texas Clean Air Act for construction or modification of certain facilities.

The bill was read second time.

Senator Brown offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 3019**, by adding a new SECTION 2 to read as follows, and renumbering appropriately:

SECTION 2: No later than December 1, 1998, the commission shall develop a voluntary emissions reduction plan for the permitting of existing significant sources.

The amendment was read and was adopted by a viva voce vote.

Senator Brown offered the following amendment to the bill:

Floor Amendment No. 2

Amend **HB 3019** as follows:

(1) Strike SECTION 1 and substitute with the following:

SECTION 1. Subsection 382.057(a), Health and Safety Code is amended to read as follows:

(a) Consistent with Section 382.0511, the commission by rule may exempt from the requirements of Section 382.0518 changes within any facility [~~a permitted facility and certain types of facilities~~] if it is found on investigation that such changes or types of facilities will not make a significant contribution of air contaminants to the atmosphere. The commission by rule shall exempt from the requirements of Section 382.0518 or issue a standard permit for the installation of emission control equipment that constitutes a modification or a new facility, subject to such conditions restricting the applicability of such exemption or standard permit that the commission deems necessary to accomplish the intent of this chapter. The commission may not exempt any facility or any modification of an existing facility defined as "major" under the federal Clean Air Act or regulations adopted under that Act. Nothing in this subsection shall be construed to limit the commission's general power to control the state's air quality under Section 382.011(a).

The amendment was read and was adopted by a viva voce vote.

HB 3019 as amended was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Barrientos, Shapleigh, and Truan asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 3019 ON THIRD READING

Senator Brown moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3019** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 24, Nays 5.

Yeas: Armbrister, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Galloway, Harris, Haywood, Lindsay, Lucio, Luna, Madla, Nelson, Nixon, Ogden, Patterson, Ratliff, Shapiro, Sibley, Wentworth, Zaffirini.

Nays: Barrientos, Gallegos, Moncrief, Shapleigh, Truan.

Absent: West, Whitmire.

HB 3019 was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Barrientos, Gallegos, Moncrief, Shapleigh, and Truan asked to be recorded as voting "Nay" on the final passage of the bill.

HOUSE BILL 803 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 803, Relating to investment of the volunteer firefighters' relief and retirement fund.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 803 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 803** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

HB 803 was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 3572 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 3572, Relating to the powers of and the application of the professional prosecutors act to the county attorney for Colorado County.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 3572 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3572** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

HB 3572 was read third time and was passed by a viva voce vote.

HOUSE BILL 623 ON SECOND READING

On motion of Senator Luna and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 623, Relating to certification of public school educators.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 623 ON THIRD READING

Senator Luna moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 623** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

HB 623 was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 846 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 846, Relating to the exemption from ad valorem taxation of certain public property.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 846 ON THIRD READING

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 846** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

HB 846 was read third time and was passed by a viva voce vote.

(Senator Sibley in Chair)

PERMISSION TO MEET GRANTED

On motion of Senator Armbrister and by unanimous consent, the conference committees on **HB 4** and **HJR 4** were granted permission to meet while the Senate was in session.

HOUSE BILL 907 ON SECOND READING

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 907, Relating to the application of the professional prosecutors law to the criminal district attorney of Collin County.

The bill was read second time.

Senator Shapiro offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 907** by striking all below the enacting clause and substituting the following:

SECTION 1. Section 46.002, Government Code, is amended to read as follows:

Sec. 46.002. PROSECUTORS SUBJECT TO CHAPTER. This chapter applies only to the following prosecutors:

(1) the district attorneys for the 2nd, 8th, 9th, 12th, 18th, 21st, 22nd, 23rd, 24th, 26th, 27th, 29th, ~~32nd~~, 34th, 35th, 36th, 38th, 43rd, 47th, 49th, ~~50th~~, 51st, 52nd, 53rd, 63rd, 64th, 66th, 69th, 70th, 76th, 81st, 84th, 85th, ~~88th~~, 90th, 97th, ~~100th~~, 105th, 106th, 110th, 118th, 119th, 123rd, 142nd, 145th, 156th, 159th, 173rd, 196th, 198th, 216th, 220th, 229th, 235th, 253rd, 259th, 266th, 268th, 271st, 278th, 286th, 329th, 349th, and 355th judicial districts;

(2) the criminal district attorneys for the counties of Anderson, Austin, Bastrop, Bexar, Bowie, Brazoria, Caldwell, Calhoun, Cass, ~~Collin~~, Deaf Smith, Denton, Eastland, Galveston, Gregg, Harrison, Hays, Hidalgo, Jasper, Jefferson, Kaufman, Lubbock, McLennan, Navarro, Panola, Polk, Randall, Rockwall, San Jacinto, Smith, Tarrant, Taylor, Tyler, Upshur, Van Zandt, Victoria, Walker, Waller, Wichita, Wood, and Yoakum; and

(3) the county attorneys performing the duties of district attorneys in the counties of Andrews, Callahan, Cameron, Castro, Ellis, Falls, Fannin, Freestone, Grayson, Lamar, Lamb, Lampasas, Lee, Limestone, Marion, Milam, Morris, Ochiltree, Orange, Red River, Robertson, Rusk, Terry, Webb, and Willacy.

SECTION 2. Section 43.144, Government Code, is amended as follows:

Sec. 43.144. 88TH JUDICIAL DISTRICT. ~~[(a)]~~ The voters of Hardin County elect a district attorney for the 88th Judicial District. The district attorney acts as district attorney in Hardin County only.

~~[(b) The Commissioners Court of Hardin County may supplement the state salary of the district attorney in the amount set by the commissioners court, not to exceed \$5,000 a year. The supplemental salary shall be paid from the officers' salary fund of the county, if adequate. If that fund is inadequate, the commissioners court may transfer the necessary funds from the general fund of the county.]~~

SECTION 3. Section 44.143, Government Code, is amended to read as follows:

Sec. 44.143. COLLIN COUNTY. (a) The criminal district attorney of Collin County shall attend each term and session of the district courts in Collin County held for the transaction of criminal business. He shall represent the state in all criminal and civil cases in the courts in the county unless otherwise provided by law.

(b) The criminal district attorney has all the powers, duties, and privileges in Collin County relating to criminal or civil matters involving the county or state that are conferred by law on county and district attorneys in the various counties and districts.

~~(c) [The criminal district attorney may not engage in the private practice of law.]~~

~~[(d) The Commissioners Court of Collin County may supplement the compensation paid by the state to the criminal district attorney.]~~

~~[(c) Collin County is not entitled to the benefits of Subchapter C, Chapter 41, in addition to the state compensation provided by Subsection (d):~~

~~[(f)] A vacancy in the office of criminal district attorney is filled by appointment by the Commissioners Court of Collin County. The appointee holds office until the next general election.~~

SECTION 4. This Act takes effect September 1, 1997.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted by a viva voce vote.

HB 907 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 907 ON THIRD READING

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 907** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

HB 907 was read third time and was passed by a viva voce vote.

HOUSE BILL 2488 ON SECOND READING

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2488, Relating to the interview of a child in chambers in a suit affecting the parent-child relationship.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2488 ON THIRD READING

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2488** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

HB 2488 was read third time and was passed by a viva voce vote.

SENATORS ANNOUNCED ABSENT-EXCUSED

On motion of Senator Truan, Senators Armbrister, Bivins, Harris, Luna, and Shapiro were announced "Absent-excused" on account of important business.

HOUSE BILL 844 ON SECOND READING

On motion of Senator Nixon and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 844, Relating to the creation of the office of district attorney for Judicial District 1-A and to the abolition of the jurisdiction of the district attorney for the 1st Judicial District in Newton County.

The bill was read second time.

Senator Nixon offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 844** by striking all below the enacting clause and substituting the following:

SECTION 1. Section 43.101, Government Code, is amended to read as follows:

Sec. 43.101. 1ST JUDICIAL DISTRICT. The voters of [~~Newton;~~] Sabine[;] and San Augustine counties elect a district attorney for the 1st Judicial District who represents the state in that district court only in those counties.

SECTION 2. Section 44.001, Government Code, is amended to read as follows:

Sec. 44.001. ELECTION. The voters of each of the following counties elect a criminal district attorney: Anderson, Austin, Bastrop, Bexar, Bowie, Brazoria, Caldwell, Calhoun, Cass, Collin, Dallas, Deaf Smith, Denton, Eastland, Galveston, Gregg, Harrison, Hays, Hidalgo, Jackson, Jasper, Jefferson, Kaufman, Lubbock, McLennan, Navarro, Newton, Panola, Polk, Randall, Rockwall, San Jacinto, Smith, Tarrant, Taylor, Tyler, Upshur, Van Zandt, Victoria, Walker, Waller, Wichita, Wood, and Yoakum.

SECTION 3. Subchapter B, Chapter 44, Government Code, is amended by adding Section 44.276 to read as follows:

Sec. 44.276. NEWTON COUNTY. (a) The criminal district attorney of Newton County must be at least 25 years old and have been a practicing attorney in this state for five years.

(b) The criminal district attorney shall attend each term and session of the district courts in Newton County and each term and session of the inferior courts of the county held for the transaction of criminal business and shall exclusively represent the state in all criminal matters before those courts.

(c) The criminal district attorney shall perform the duties conferred by law on county and district attorneys in the various counties and districts.

(d) The criminal district attorney shall collect the fees, commissions, and perquisites that are provided by law for similar services rendered by a district or county attorney.

(e) The criminal district attorney is entitled to receive in equal monthly installments compensation from the state equal to the amount paid by the state to district attorneys. The state compensation shall be paid by the comptroller as appropriated by the legislature.

SECTION 4. Section 46.002, Government Code, is amended to read as follows:

Sec. 46.002. PROSECUTORS SUBJECT TO CHAPTER. This chapter applies only to the following prosecutors:

(1) the district attorneys for the 2nd, 8th, 9th, 12th, 18th, 21st, 22nd, 23rd, 24th, 26th, 27th, 29th, 34th, 35th, 36th, 38th, 43rd, 47th, 49th, 51st, 52nd, 53rd, 63rd, 64th, 66th, 69th, 70th, 76th, 81st, 84th, 85th, 90th, 97th, 105th, 106th, 110th, 118th, 119th, 123rd, 142nd, 145th, 156th, 159th, 173rd, 196th, 198th, 216th, 220th, 229th, 235th, 253rd, 259th, 266th, 268th, 271st, 278th, 286th, 329th, 349th, and 355th judicial districts;

(2) the criminal district attorneys for the counties of Anderson, Austin, Bastrop, Bexar, Bowie, Brazoria, Caldwell, Calhoun, Cass, Deaf Smith, Denton, Eastland, Galveston, Gregg, Harrison, Hays, Hidalgo, Jasper, Jefferson, Kaufman, Lubbock, McLennan, Navarro, Newton, Panola, Polk, Randall, Rockwall, San Jacinto, Smith, Tarrant, Taylor, Tyler, Upshur, Van Zandt, Victoria, Walker, Waller, Wichita, Wood, and Yoakum; and

(3) the county attorneys performing the duties of district attorneys in the counties of Andrews, Callahan, Cameron, Castro, Ellis, Falls, Fannin, Freestone, Grayson, Lamar, Lamb, Lampasas, Lee, Limestone, Marion, Milam, Morris, Ochiltree, Orange, Red River, Robertson, Rusk, Terry, Webb, and Willacy.

SECTION 5. The office of county attorney of Newton County is abolished.

SECTION 6. This Act takes effect September 1, 1997.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted by a viva voce vote.

HB 844 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 844 ON THIRD READING

Senator Nixon moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 844** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 0.

Absent-excused: Armbrister, Bivins, Harris, Luna, Shapiro.

HB 844 was read third time and was passed by a viva voce vote.

HOUSE BILL 2025 ON SECOND READING

On motion of Senator Carona and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2025, Relating to the regulation of the sale and use of certain refrigerants; providing a criminal penalty.

The bill was read second time.

Senator Carona offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2025** as follows:

(1) In SECTION 2 of the bill, in Section 10, The Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes) (Senate Committee Printing, page 1, between lines 32 and 33), insert a new Subsection (c) to read as follows:

(c) A person may not sell a flammable refrigerant or refrigerant substitute that contains a liquid petroleum-based product for use in an automotive, aviation, commercial, or residential air conditioning or refrigeration system. A flammable refrigerant or refrigerant substitute that contains a liquid petroleum-based product may not be used in the maintenance or installation of any system relating to an airplane or other aircraft.

(2) In SECTION 2 of the bill, in Section 10, The Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes) (Senate Committee Printing, page 1, line 33), strike "(c)" and substitute "(d)".

(3) In SECTION 2 of the bill, in Section 10, The Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes) (Senate Committee Printing, page 1, line 40), strike "(d) Except as provided by Subsection (f)" and substitute "(e) Except as provided by Subsection (g)".

(4) In SECTION 2 of the bill, in Section 10, The Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes) (Senate Committee Printing, page 1, line 47), strike "(e)" and substitute "(f)".

(5) In SECTION 2 of the bill, in Section 10, The Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes) (Senate Committee Printing, page 1, line 52), strike "(f)" and substitute "(g)".

(6) In SECTION 2 of the bill, in Section 10, The Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes) (Senate Committee Printing, page 1, line 56), strike "(g)" and substitute "(h)".

(7) In SECTION 2 of the bill, in Section 10, The Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes) (Senate Committee Printing, page 1, line 58), strike "Subsection (d) or (e)" and substitute "Subsection (c), (e), or (f)".

(8) In SECTION 2 of the bill, in Section 10, The Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes) (Senate Committee Printing, page 1, line 60), strike "(h)" and substitute "(i)".

(9) In SECTION 3 of the bill, in Subsection (b) of that section (Senate Committee Printing, page 1, line 64), strike "10(c), (d), (e), and (g)" and substitute "10(d), (e), (f), and (h)".

The amendment was read and was adopted by a viva voce vote.

HB 2025 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2025 ON THIRD READING

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2025** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 0.

Absent-excused: Armbrister, Bivins, Harris, Luna, Shapiro.

HB 2025 was read third time and was passed by a viva voce vote.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Friday, May 23, 1997

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

SB 23, Relating to the boundaries, confirmation election, and taxing authority of the Clear Creek Watershed Regional Flood Control District.

SB 118, Relating to placement of certain children in certain long-term care institutions.
(Amended)

SB 167, Relating to the offense of failing to pay the wages of an employee.
(Amended)

SB 280, Relating to the experience credited in placing a public school teacher or librarian on the state minimum salary schedule.
(Amended)

SB 462, Relating to the residency requirement for admission into the public schools of a school district.

SB 487, Relating to payment under contracts with the Texas Rehabilitation Commission for vocational rehabilitation services.

SB 711, Relating to the creation of municipal courts of record in Dalworthington Gardens.

SB 937, Relating to the creation of the Texas Advisory Commission on Intergovernmental Relations.

SB 972, Relating to mental health treatment decisions made on behalf of an incapacitated individual and authorizing a declaration for mental health treatment.

SB 1311, Relating to providing scholarships to students at institutions of higher education for certain out-of-state intern programs.
(Committee Substitute)

SB 1566, Relating to licensing regulations for physician assistants and acupuncturists; providing an administrative penalty.
(Amended)

SB 1578, Relating to meetings of the Texas Higher Education Coordinating Board to consider higher education impact statements.

SB 1607, Relating to the retention of certain medical records.

SB 1651, Relating to improving access to health care for the citizens of Texas by providing for the reimbursement and use of particular health care practitioners who are licensed by the state to provide certain services.

SB 1893, Relating to the number of days of service required of certain educators for the school year.

SB 1907, Relating to tuition and fees charged by public institutions of higher education, including the redesignation of certain fees as tuition.
(Committee Substitute)

SB 1911, Relating to interstate natural gas pipeline facilities.
(Committee Substitute)

SB 1912, Relating to hazardous liquid or carbon dioxide pipeline facilities.
(Committee Substitute)

SB 1914, Relating to the provision of telecommunications services by the General Services Commission.

SCR 34, Memorializing Congress to improve patient access to quality health care by facilitating the rapid review and approval of new drugs, biological products, and medical devices.

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

HOUSE BILL 399 ON SECOND READING

On motion of Senator Ratliff and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 399, Relating to the availability of governmental information about motor vehicle accidents.

The bill was read second time.

Senator Ratliff offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 399** on page 1, line 52 (committee printing) by inserting the following after "Subsection (c)," and before "Subsection F": "of this Section, then".

The amendment was read and was adopted by a viva voce vote.

HB 399 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 399 ON THIRD READING

Senator Ratliff moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 399** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 0.

Absent-excused: Armbrister, Bivins, Harris, Luna, Shapiro.

HB 399 was read third time and was passed by the following vote: Yeas 26, Nays 0. (Same as previous roll call)

HOUSE BILL 2615 ON SECOND READING

On motion of Senator Moncrief and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2615, Relating to certain findings concerning an allegation of child abuse or neglect in a suit affecting the parent-child relationship.

The bill was read second time.

Senator Moncrief offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 2615** (House engrossment), in SECTION 1 of the bill, by inserting the following on page 1, line 12, between "law" and the period: ", including attorneys fees, costs of experts, and any other costs".

The committee amendment was read and was adopted by a viva voce vote.

Senator Moncrief offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2615** as follows:

- 1) On page 1, line 22, strike "or lacked factual foundation".
- 2) On page 1, line 22, add "This finding shall not constitute collateral estoppel for any criminal proceeding." between "." and "The".
- 3) On page 1, line 24, add the word "civil" between "any" and "sanction".

The amendment was read and was adopted by a viva voce vote.

HB 2615 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2615 ON THIRD READING

Senator Moncrief moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2615** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 0.

Absent-excused: Armbrister, Bivins, Harris, Luna, Shapiro.

HB 2615 was read third time and was passed by a viva voce vote.

HOUSE BILL 2385 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2385, Relating to the creation of the Health and Human Services Policy Council.

The bill was read second time.

Senator Zaffirini offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2385** by striking all below the enacting clause and substituting the following:

SECTION 1. (a) As part of the Sunset Advisory Commission's review of health and human services agencies in accordance with Chapter 325, Government Code (Texas Sunset Act) during the 76th Legislature, the commission shall study:

(1) the need for objective research and analysis of health and human service needs and programs;

(2) options for objective development of a long-range strategic plan for health and human services in this state;

(3) whether existing resources available to the legislature include safeguards needed to maintain the quality of research and promote greater accountability to state leadership; and

(4) the most appropriate means for providing to the legislature the research information necessary to manage Texas' health and human services system and plan for its future.

(b) The Sunset Advisory Commission shall consider the results of the study in developing its recommendations before the 76th Legislature convenes.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The amendment was read and was adopted by a viva voce vote.

HB 2385 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2385 ON THIRD READING

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2385** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 0.

Absent-excused: Armbrister, Bivins, Harris, Luna, Shapiro.

HB 2385 was read third time and was passed by a viva voce vote.

HOUSE BILL 2129 ON SECOND READING

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2129, Relating to the administration and financing of wireless service providers of 9-1-1 service.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2129 ON THIRD READING

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2129** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 0.

Absent-excused: Armbrister, Bivins, Harris, Luna, Shapiro.

HB 2129 was read third time and was passed by a viva voce vote.

HOUSE BILL 3157 ON SECOND READING

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 3157, Relating to excepting certain legislative documents from required disclosure under the open records law.

The bill was read second time.

Senator Brown offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 3157** as follows:

In SECTION 1, add subsection (c) after subsection (b) as follows:

"(c) An electronic communication between legislators, between a legislator and a legislative employee, or between legislative employees is excepted from the requirements of Section 552.021."

The amendment was read and was adopted by a viva voce vote.

HB 3157 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 3157 ON THIRD READING

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3157** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 0.

Absent-excused: Armbrister, Bivins, Harris, Luna, Shapiro.

HB 3157 was read third time and was passed by the following vote: Yeas 26, Nays 0. (Same as previous roll call)

HOUSE BILL 1692 ON SECOND READING

On motion of Senator Patterson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 1692, Relating to the operation of publicly owned and operated harbor and port facilities located in certain municipalities.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1692 ON THIRD READING

Senator Patterson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1692** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 0.

Absent-excused: Armbrister, Bivins, Harris, Luna, Shapiro.

HB 1692 was read third time and was passed by the following vote: Yeas 26, Nays 0. (Same as previous roll call)

HOUSE BILL 1043 ON SECOND READING

On motion of Senator Lindsay and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 1043, Relating to the issuance of bonds under the Higher Education Authority Act.

The bill was read second time and was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator Ellis asked to be recorded as "Present-not voting" on the passage of the bill to third reading.

(Senator Brown in Chair)

HOUSE BILL 1043 ON THIRD READING

Senator Lindsay moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1043** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 0, Present-not voting 1.

Present-not voting: Ellis.

Absent-excused: Armbrister, Bivins, Harris, Luna, Shapiro.

HB 1043 was read third time and was passed by the following vote: Yeas 25, Nays 0, Present-not voting 1. (Same as previous roll call)

HOUSE BILL 2845 ON SECOND READING

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2845, Relating to the authority of a justice of the peace to reopen an inquest.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2845 ON THIRD READING

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2845** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 0.

Absent-excused: Armbrister, Bivins, Harris, Luna, Shapiro.

HB 2845 was read third time and was passed by a viva voce vote.

COMMITTEE SUBSTITUTE

HOUSE BILL 587 ON SECOND READING

On motion of Senator Shapleigh and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

CSHB 587, Relating to certain community centers.

The bill was read second time.

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 587** as follows:

(1) In SECTION 2 of the bill, in added Section 534.104, Health and Safety Code, strike Subsection (a) (page 2, lines 45-50, senate committee printing) and substitute:

(a) A nonprofit health maintenance organization created under Section 534.101 is a health care provider that is a nonprofit health maintenance organization created and operated by a community center for purposes of Section 84.007(e), Civil Practice and Remedies Code. The nonprofit health maintenance organization is not a governmental unit or a unit of local government, for purposes of Chapters 101 and 102, Civil Practice and Remedies Code, respectively, or a local government for purposes of Chapter 791, Government Code.

(2) In SECTION 2 of the bill (page 2, line 44, senate committee printing), at the end of added Section 534.103, Health and Safety Code, insert the following: The commissioner of insurance may adopt rules as necessary to accept funding sources other than the sources specified by Section 13, Texas Health Maintenance Organization Act (Article 20A.13, Vernon's Texas Insurance Code), from a nonprofit health maintenance organization created and operating under this subchapter, to meet the minimum surplus requirements of that section.

(3) Insert the following appropriately numbered section:

SECTION ____ . Section 84.007(e), Civil Practice and Remedies Code, is amended to read as follows:

(e) Sections 84.005 and 84.006 of this chapter do not apply to a health care provider as defined in the Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), unless the provider is a federally funded migrant or community health center under the Public Health Service Act (42 U.S.C.A. Sections 254(b) and (c)) or is a nonprofit health maintenance organization created and operated by a community center under Section 534.101, Health and Safety Code, or unless the provider usually provides discounted services at or below costs based on the ability of the beneficiary to pay. Acceptance of Medicare or Medicaid payments will not disqualify a health care provider under this section. In no event shall Sections 84.005 and 84.006 of this chapter apply to a general hospital or special hospital as defined in Chapter 241, Health and Safety Code, or a facility or institution licensed under Subtitle C, Title 7, Health and Safety Code, or Chapter 242, Health and Safety Code, or to any health maintenance organization created and operating under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code), except for a nonprofit health maintenance organization created under Section 534.101, Health and Safety Code.

(4) Renumber subsequent sections of the bill appropriately.

The amendment was read and was adopted by a viva voce vote.

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 2

Amend CSHB 587 as follows:

Amend SECTION 2 of the bill, following proposed Sec. 534.104, Health and Safety Code (page 2, line 55, committee printing), by inserting:

SECTION 534.105. CONSIDERATION OF BIDS. The department shall give equal consideration to bids submitted by any entity, whether it be public, for-profit, or non-profit, if the department accepts bids to provide services through a capitated or at-risk payment arrangement and if the entities meet all other criteria as required by the department.

The amendment was read and was adopted by a viva voce vote.

CSHB 587 as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 587 ON THIRD READING**

Senator Shapleigh moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 587** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 0.

Absent-excused: Armbrister, Bivins, Harris, Luna, Shapiro.

CSHB 587 was read third time and was passed by a viva voce vote.

SENATOR ANNOUNCED ABSENT-EXCUSED

On motion of Senator Zaffirini, Senator Nelson was announced "Absent-excused" on account of important business.

HOUSE BILL 298 ON SECOND READING

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 298, Relating to election dates, office hours for election purposes, and information concerning cost savings in the conduct of elections.

The bill was read second time.

Senator Ellis offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 298** as follows:

Strike Section 3 of the bill in its entirety, and renumber remaining sections accordingly.

The committee amendment was read and was adopted by a viva voce vote.

HB 298 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 298 ON THIRD READING

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 298** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 0.

Absent-excused: Armbrister, Bivins, Harris, Luna, Nelson, Shapiro.

HB 298 was read third time and was passed by the following vote: Yeas 25, Nays 0. (Same as previous roll call)

HOUSE BILL 2981 ON SECOND READING

On motion of Senator Fraser and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2981, Relating to notice to a payee of a change in the payor of oil or gas proceeds.

The bill was read second time.

Senator Ogden offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2981** (Senate committee report) as follows:

1) Strike the recital to SECTION 1 of the bill (page 1, lines 11-12) and substitute the following:

"SECTION 1. Subchapter J, Chapter 91, Natural Resources Code, is amended by adding Sections 91.407 and 91.408 to read as follows:"

2) At the end of SECTION 1 of the bill add the following:

Sec. 91.408. NOTIFICATION TO NONOPERATORS OF ADDITIONAL PAYMENT RECEIVED BY OPERATOR. (a) An operator of an oil and gas property who receives a payment for crude oil or condensate from the first purchaser at the operated property in addition to the purchase price, regardless of how the payment is described, must notify the nonoperators for which it is selling production from the property and the royalty owners to whom it is obligated to pay royalty on production from the property of the receipt of such payment and describe the nature and purpose of the payment. The notification is considered timely if made as of the later of:

(1) the 90th day after the date of receipt of such payment; or

(2) the date on which the next payment to the nonoperator or royalty owner is made in accordance with Section 91.402.

(b) Accounting adjustments made in the normal course of business for the purchase price of the crude oil or condensate at the operated property are not considered additional payments under this section.

The amendment was read and was adopted by a viva voce vote.

RECORD OF VOTE

Senator Moncrief asked to be recorded as "Present-not voting" on the adoption of Floor Amendment No. 1.

HB 2981 as amended was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator Moncrief asked to be recorded as "Present-not voting" on the passage of the bill to third reading.

HOUSE BILL 2981 ON THIRD READING

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2981** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 24, Nays 0, Present-not voting, 1.

Present-not voting: Moncrief.

Absent-excused: Armbrister, Bivins, Harris, Luna, Nelson, Shapiro.

HB 2981 was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Moncrief asked to be recorded as "Present-not voting" on the final passage of the bill.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2101 ON SECOND READING**

On motion of Senator Cain and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

CSHB 2101, Relating to stopping at railroad grade crossings; providing penalties.

The bill was read second time.

Senator Cain offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 2101**, SECTION 1, Sec. 545.251(c) by inserting "and proceed at a speed that is reasonable for the existing conditions." at the end of the first sentence following the word "crossing" and before the beginning of the second sentence, beginning with the word "If".

The amendment was read and was adopted by a viva voce vote.

CSHB 2101 as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2101 ON THIRD READING**

Senator Cain moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2101** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 0.

Absent-excused: Armbrister, Bivins, Harris, Luna, Nelson, Shapiro.

CSHB 2101 was read third time and was passed by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1212**

Senator Sibley submitted the following Conference Committee Report:

Austin, Texas
May 23, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1212** have

had the same under consideration, and beg to report it back with the recommendation that it do pass.

SIBLEY
DUNCAN
ELLIS
PATTERSON
SHAPLEIGH

AVERITT
OLIVO
VAN DE PUTTE

On the part of the Senate On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

HOUSE BILL 2049 ON SECOND READING

On motion of Senator Madla and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2049, Relating to the authority of a county to regulate certain fireworks during a drought.

The bill was read second time.

Senator Madla offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 2049**, Section 1, Sec. 240.904(a)(2) by deleting the current section in its entirety and substituting in lieu thereof the following:

(2) "Drought conditions" shall mean the existence immediately preceding or during the fireworks season of a long term deficit of moisture creating atypically severe conditions with increased wildfire occurrence as defined by the Texas Forest Service through the use of the Keetch-Byram Drought Index, or when such index is not available, through a comparable measurement which takes into consideration the burning index, spread component or ignition component for that particular area. ["Climatic conditions" shall mean specific conditions that exist due to a severe lack of precipitation in a specified area:]

The committee amendment was read and was adopted by a viva voce vote.

Senator Madla offered the following committee amendment to the bill:

Committee Amendment No. 2

Amend **HB 2049**, Section 1, by adding a new subsection (j) to read as follows:

(j) The changes in the law made by this Act apply to drought conditions that may arise in any county or part of a county in this State. Any regulations adopted prior to the effective date of this Act are governed by the law that existed immediately before that effective date and those regulations are continued in effect for that purpose until such effective date. Subsequent to the effective date of this Act the provisions of this

Act shall supersede any other provisions of law or regulations of administrative or other governmental bodies.

The committee amendment was read and was adopted by a viva voce vote.

(Senator Ratliff in Chair)

Senator Brown offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2049** by adding the following appropriately numbered new section:

SECTION . Nothing in this Act shall be construed to pre-empt or take precedence over any provision of SB 1 75th Session Texas Legislature should such proposal be finally enacted.

The amendment was read and was adopted by a viva voce vote.

HB 2049 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2049 ON THIRD READING

Senator Madla moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2049** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 0.

Absent-excused: Armbrister, Bivins, Harris, Luna, Nelson, Shapiro.

HB 2049 was read third time and was passed by the following vote: Yeas 25, Nays 0. (Same as previous roll call)

HOUSE BILL 3567 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 3567, Relating to the addition of territory to, the board of directors of, and disannexation procedures for the Duval County Conservation and Reclamation District.

The bill was read second time and was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator Lucio asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 3567 ON THIRD READING

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3567** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 24, Nays 1.

Nays: Lucio.

Absent-excused: Armbrister, Bivins, Harris, Luna, Nelson, Shapiro.

HB 3567 was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Lucio asked to be recorded as voting "Nay" on the final passage of the bill.

GUEST PRESENTED

Senator Wentworth was recognized and introduced to the Senate Kirsten Matson of Round Rock, serving today as an Honorary Senate Page.

The Senate welcomed Kirsten.

HOUSE BILL 768 ON SECOND READING

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 768, Relating to remedies in an action alleging discrimination against an employee based on a claim for workers' compensation benefits.

The bill was read second time.

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 768** by striking all below the enacting clause and replacing it with the following:

SECTION 1. Section 451.002, Labor Code, is amended by amending Subsection (c) to read as follows:

(c) The burden of proof in a proceeding under this section is on the employee to establish that an action of the employee protected under Section 451.001 was the substantial cause of the employee's discharge from the position of employment.

SECTION 2. This Act takes effect September 1, 1997, and applies only to a cause of action that accrues on or after the effective date of this Act. An action that accrues before the effective date of this Act is governed by the law in effect when the action accrued, and the former law is continued in effect for that purpose.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted by a viva voce vote.

HB 768 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 768 ON THIRD READING

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 768** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 0.

Absent-excused: Armbrister, Bivins, Harris, Luna, Nelson, Shapiro.

HB 768 was read third time and was passed by a viva voce vote.

HOUSE BILL 3350 ON SECOND READING

On motion of Senator Sibley and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 3350, Relating to the criminal offenses applicable to gambling and gambling devices.

The bill was read second time.

Senator Sibley offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 3350** by striking everything below the enacting clause and replacing it with the following:

SECTION 1. Section 47.01, Penal Code, is amended by amending Subdivisions (4) and (9) and adding the following new definitions in the appropriate location and renumber accordingly:

(4) "Gambling device" means any device, that is not an amusement machine as defined by this chapter, and:

(A) ~~[includes, but is not limited to, gambling device versions of bingo, keno, blackjack, lottery, roulette, video poker, or similar electronic, electromechanical, or mechanical games, or facsimiles thereof, that operate by chance or partially so, that as a result of the play or operation of the game award credits or free games, and that record the number of free games or credits so awarded and the cancellation or removal of the free games or credits]~~ is a game of chance or a combination of skill and chance, that can be played for consideration and is designed, constructed, adapted or maintained to afford a [electronic, electromechanical, or mechanical contrivance not excluded under Paragraph (b) that for a consideration affords the] player of the device an opportunity to obtain anything of value based~~[the award of which is determined]~~ solely or partially on ~~[by]~~ chance; and,

(B) ~~[does not include any electronic, electromechanical, or mechanical contrivance designed, made, and adapted solely for bona fide amusement purposes if the contrivance rewards the player exclusively with noncash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or \$5, whichever is less]~~ any other device that:

(1) allows a player to increase the probability of winning by paying a greater consideration than the minimum required for a single play; or,

(2) allows a player to accumulate or carry over a game credit or replay right from a single play of the device to the next single play of the device and allow the game credit or replay right to be altered, removed, cancelled, or knocked off by a means other than continuous play.

(9) "Thing of value," "anything of value," or "something of value" includes anything that can be awarded to the player of a gambling device other than [means any benefit, but does not include] an unrecorded and immediate right to continue playing the device without paying additional consideration. Each of those terms includes:

(A) a ticket or token that entitles the holder to receive any other thing of value;

(B) a game credit or replay right awarded by a gambling device if it is capable of accumulating or recording and amending, canceling, or removing the game credit or replay right [of replay not exchangeable for value].

() "Amusement machine" means a device that is designed, constructed, and maintained solely for bona fide amusement purposes that awards the player exclusively with prizes, toys, novelties, other noncash merchandise or with tickets or tokens redeemable solely for gift certificates or noncash merchandise that have a maximum wholesale value, not exceeding \$5, available from a single play of the machine. An amusement machine is not a gambling device, as defined in this chapter, and the prohibitions and penalties in this chapter do not apply to amusement machines.

() "Device" includes all or part of an operable or inoperable mechanical, electronic, or electromechanical contrivance, machine, or apparatus.

() "Gambling" means the offense described by Section 47.02.

() "Noncash merchandise" does not include any of the following:

(A) a money order;

(B) a traveler's check; or

(C) an item of cash equivalence, other than a gift certificate.

() "Single play" means the insertion of a consideration into a contrivance, device or machine that allows the player to take part in one turn, chance, or play of contrivance, device or machine.

SECTION 2. Section 47.02(e), Penal Code, is amended to read as follows:

(e) It is a defense to prosecution under this section that a person played for something of value other than money using an amusement machine [~~electronic, electromechanical, or mechanical contrivance excluded from the definition of "gambling device" under Section 47.01(4)(B).~~].

SECTION 3. Section 47.03(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if the person [he] intentionally or knowingly does any of the following acts with the intent to further gambling:

(1) operates or participates in the earnings of a gambling place or gambling device;

(2) engages in bookmaking;

(3) for gain, becomes a custodian of anything of value bet or offered to be bet;

(4) sells chances on the partial or final result of or on the margin of victory in any game or contest or on the performance of any participant in any game or contest or on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or

(5) for gain, sets up or promotes any lottery or sells or offers to sell or knowingly possesses for transfer, or transfers any card, stub, ticket, check, or other device designed to serve as evidence of participation in any lottery.

SECTION 4. Section 47.06(b) and (e), Penal Code, is amended to read as follows:

(b) A person commits an offense if, with the intent to further gambling, he knowingly owns, manufactures, transfers commercially, or possesses a mechanical or electromechanical slot machine or any altered gambling equipment that he knows is designed for gambling purposes or any equipment that he knows is designed as a subassembly or essential part of such device.

(e) An offense under this section is a Class A misdemeanor, unless the defendant has been previously convicted under this section, in which event the offense is a state jail felony.

SECTION 5. This Act takes effect December 1, 1997.

SECTION 6. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

SIBLEY
CARONA
PATTERSON

The amendment was read.

Senator Sibley offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 2

Amend Floor Amendment No. 1 to HB 3350 as follows:

- (1) On page 1, line 10, after the word "a" insert "device on which a"
- (2) On page 1, line 11, after the word "chance" delete ", that"

The amendment to Floor Amendment No. 1 was read and was adopted by a viva voce vote.

Question recurring on the adoption of Floor Amendment No. 1 as amended, the amendment as amended was adopted by a viva voce vote.

HB 3350 as amended was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator Shapleigh asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 3350 ON THIRD READING

Senator Sibley moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3350** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 24, Nays 1.

Nays: Shapleigh.

Absent-excused: Armbrister, Bivins, Harris, Luna, Nelson, Shapiro.

HB 3350 was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Lucio and Shapleigh asked to be recorded as voting "Nay" on the final passage of the bill.

HOUSE BILL 2061 ON SECOND READING

On motion of Senator Patterson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2061, Relating to requiring certain individuals to file a statement of selective service status before receiving certain financial assistance.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2061 ON THIRD READING

Senator Patterson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2061** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 0.

Absent-excused: Armbrister, Bivins, Harris, Luna, Nelson, Shapiro.

HB 2061 was read third time and was passed by a viva voce vote.

HOUSE BILL 2386 ON SECOND READING

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2386, Relating to Medicaid reimbursement for certain medical consultations.

The bill was read second time.

Senator Sibley offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2386** In SECTION 1, in added Section 531.047, Government Code (page 2, between lines 4 and 5, committee printing), by adding Subsection (g) to read as follows:

(g) The Texas State Board of Medical Examiners, in consultation with the commission, as appropriate, may adopt rules as necessary to:

(1) ensure that appropriate care is provided to patients who receive services that are provided through a telemedical consultation; and

(2) prevent abuse and fraud through the use of telemedical consultations, including rules relating to filing of claims and records required to be maintained in connection with telemedicine.

The amendment was read and was adopted by a viva voce vote.

HB 2386 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2386 ON THIRD READING

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2386** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 0.

Absent-excused: Armbrister, Bivins, Harris, Luna, Nelson, Shapiro.

HB 2386 was read third time and was passed by a viva voce vote.

HOUSE BILL 2069 ON SECOND READING

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2069, Relating to certain information provided in an application for a marriage license.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2069 ON THIRD READING

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2069** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 0.

Absent-excused: Armbrister, Bivins, Harris, Luna, Nelson, Shapiro.

HB 2069 was read third time and was passed by a viva voce vote.

HOUSE BILL 2271 ON SECOND READING

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2271, Relating to the liability of certain persons concerning abandoned property.

The bill was read second time.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2271** (Senate committee printing, page 1, lines 22-26) by striking SECTION 2(a) of the bill and substituting the following:

SECTION 2(a) Section 74.05(f), Property Code, applies to any suit or complaint brought against a local governmental entity or any of its officers or employees after the effective date of this Act, regardless of the date that any element of the claim forming the basis of the suit or complaint was committed.

The amendment was read and was adopted by a viva voce vote.

HB 2271 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2271 ON THIRD READING

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2271** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 0.

Absent-excused: Armbrister, Bivins, Harris, Luna, Nelson, Shapiro.

HB 2271 was read third time and was passed by a viva voce vote.

HOUSE BILL 2128 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2128, Relating to the use of telephone caller identification services and automated dial announcing devices by telephone solicitors; providing an administrative penalty.

The bill was read second time.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2128** as follows:

Amend Subsection (e) of SECTION 1 of the bill (committee report, page 1, line 46), by striking "The caller identification information displayed must contain a telephone number at which the telephone solicitor may receive telephone calls." and substituting "Not later than September 1, 1998, the caller identification information displayed must contain a telephone number at which the telephone solicitor may receive telephone calls if the telephone solicitor leaves a message on a telephone answering device or uses an ADAD that plays a recorded message when a connection is completed to a telephone number."

The amendment was read and was adopted by a viva voce vote.

HB 2128 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2128 ON THIRD READING

Senator Barrientos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2128** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 0.

Absent-excused: Armbrister, Bivins, Harris, Luna, Nelson, Shapiro.

HB 2128 was read third time and was passed by a viva voce vote.

HOUSE BILL 2940 ON SECOND READING

On motion of Senator Carona and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2940, Relating to dealing in computer equipment by a secondhand dealer.

The bill was read second time.

Senator Carona offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2940** by adding the following appropriately numbered section and renumbering the sections of the bill accordingly:

SECTION __. Section 4, Chapter 919, Acts of the 68th Legislature, Regular Session, 1983 (Article 9024, Vernon's Texas Civil Statutes), is amended by adding Subsection (c) to read as follows:

(c) This Act does not apply to a person whose primary business includes the manufacture, sale, or service of computers or devices peripheral to computers.

The amendment was read and was adopted by a viva voce vote.

HB 2940 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2940 ON THIRD READING

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2940** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 0.

Absent-excused: Armbrister, Bivins, Harris, Luna, Nelson, Shapiro.

HB 2940 was read third time and was passed by a viva voce vote.

HOUSE BILL 2617 ON THIRD READING

The President laid before the Senate **HB 2617** on its third reading and final passage. The Constitutional Three-day Rule was suspended Wednesday, May 21, 1997.

HB 2617, Relating to the assessment of certain court costs in criminal cases and the use of that revenue to fund the Bill Blackwood Law Enforcement Management Institute.

Question—Shall **HB 2617** be read third time?

HB 2617 was read third time and was finally passed by a viva voce vote.

(Senator Truan in Chair)

**COMMITTEE SUBSTITUTE
HOUSE BILL 3465 ON SECOND READING**

On motion of Senator Patterson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

CSHB 3465, Relating to relating to the disposition of certain state property designated for military use.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 3465 ON THIRD READING**

Senator Patterson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3465** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 0.

Absent-excused: Armbrister, Bivins, Harris, Luna, Nelson, Shapiro.

CSHB 3465 was read third time and was passed by a viva voce vote.

HOUSE BILL 1684 ON SECOND READING

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 1684, Relating to circumstances in which less than the whole number of a jury may render a verdict in a criminal case.

The bill was read second time.

Senator Duncan offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 1684** to add the words ", the defendant's counsel," after the word "defendant" on page 1 at line 19 of the committee printing.

The amendment was read and was adopted by a viva voce vote.

HB 1684 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1684 ON THIRD READING

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1684** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 0.

Absent-excused: Armbrister, Bivins, Harris, Luna, Nelson, Shapiro.

HB 1684 was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1239 ON SECOND READING**

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

CSHB 1239, Relating to the voluntary cleanup program.

The bill was read second time.

Senator Brown offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 1239** as follows:

In Section 1 of the bill, Section 361.133(b)(4), Health and Safety Code, (committee printing, page 1, line 26), strike "treasurer" and substitute "comptroller".

The amendment was read and was adopted by a viva voce vote.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSHB 1239** by adding the following appropriately numbered sections as follows and renumbering the existing sections of the bill accordingly:

SECTION ____ . Subchapter B, Chapter 312, Tax Code, is amended by adding Section 312.211 to read as follows:

Sec. 312.211. AGREEMENT BY MUNICIPALITY RELATING TO PROPERTY SUBJECT TO VOLUNTARY CLEANUP AGREEMENT.

(a) This section applies only to:

(1) real property:

(A) that is located in a reinvestment zone;

(B) that is not in an improvement project financed by tax increment bonds;

(C) that is the subject of a voluntary cleanup agreement under Section 361.606, Health and Safety Code; and

(D) the value of which is adversely affected by the release of a hazardous substance or contaminant according to the two preceding appraisals by the appraisal office; and

(2) tangible personal property located on the real property.

(b) The governing body of a municipality eligible to enter into a tax abatement agreement under Section 312.002 may agree in writing with the owner of property described by Subsection (a) to exempt from taxation a portion of the value of the property for a period not to exceed four years. The agreement takes effect on January 1 of the next tax year after the date the owner receives a certificate of completion for the property under Section 361.609, Health and Safety Code. The agreement may exempt from taxation:

(1) not more than 100 percent of the value of the property in the first year covered by the agreement;

(2) not more than 75 percent of the value of the property in the second year covered by the agreement;

(3) not more than 50 percent of the value of the property in the third year covered by the agreement; and

(4) not more than 25 percent of the value of the property in the fourth year covered by the agreement.

(c) A property owner may not receive a tax abatement under this section for the first tax year covered by the agreement unless the property owner includes with the application for an exemption under Section 11.28 filed with the chief appraiser of the appraisal district in which the property has situs a copy of the certificate of completion for the property.

(d) A property owner who files a copy of the certificate of completion for property for the first tax year covered by the agreement is not required to refile the certificate in a subsequent tax year to receive a tax abatement under this section for the property for that tax year.

(e) The chief appraiser shall accept a certificate of completion filed under Subsection (c) as conclusive evidence of the facts stated in the certificate.

(f) The governing body of the municipality may cancel or modify the agreement if:

(1) the use of the land is changed from the use specified in the certificate of completion; and

(2) the governing body determines that the new use may result in an increased risk to human health or the environment.

(g) A municipality may enter into a tax abatement agreement covering property described by Subsection (a) under this section or under Section 312.204, but not under both sections. Section 312.204 applies to an agreement entered into under this section except as otherwise provided by this section.

(h) A school district may not enter into a tax abatement agreement under this section.

SECTION __. Subsection (a), Section 312.002, Tax Code, is amended to read as follows:

(a) A taxing unit may not enter into a tax abatement agreement under this chapter and the governing body of a municipality or county may not designate an area as a reinvestment zone unless the governing body has established guidelines and criteria governing tax abatement agreements by the taxing unit and a resolution stating that the taxing unit elects to become eligible to

participate in tax abatement. The guidelines applicable to property other than property described by Section 312.211(a) must provide for the availability of tax abatement for both new facilities and structures and for the expansion or modernization of existing facilities and structures.

SECTION _____. Subsections (c) and (d), Section 312.201, Tax Code, are amended to read as follows:

(c) Area of a reinvestment zone designated for residential tax abatement or commercial-industrial tax abatement may be included in an overlapping or coincidental residential or commercial-industrial zone. In that event, the zone in which the property is considered to be located for purposes of executing an agreement under Section 312.204 or 312.211 is determined by the comprehensive zoning ordinance, if any, of the municipality.

(d) The governing body may not adopt an ordinance designating an area as a reinvestment zone until the governing body has held a public hearing on the designation and has found that the improvements sought are feasible and practical and would be a benefit to the land to be included in the zone and to the municipality after the expiration of an agreement entered into under Section 312.204 or 312.211, as applicable. At the hearing, interested persons are entitled to speak and present evidence for or against the designation. Not later than the seventh day before the date of the hearing, notice of the hearing must be:

- (1) published in a newspaper having general circulation in the municipality; and
- (2) delivered in writing to the presiding officer of the governing body of each taxing unit that includes in its boundaries real property that is to be included in the proposed reinvestment zone.

SECTION _____. Subsection (a), Section 312.2041, Tax Code, is amended to read as follows:

(a) Not later than the seventh day before the date on which a municipality enters into an agreement under Section 312.204 or 312.211, the governing body of the municipality or a designated officer or employee of the municipality shall deliver to the presiding officer of the governing body of each other taxing unit in which the property to be subject to the agreement is located a written notice that the municipality intends to enter into the agreement. The notice must include a copy of the proposed agreement.

SECTION _____. Section 312.205, Tax Code, is amended to read as follows:

Sec. 312.205. SPECIFIC TERMS OF TAX ABATEMENT AGREEMENT.

(a) An agreement made under Section 312.204 or 312.211 must:

- (1) list the kind, number, and location of all proposed improvements of the property;
- (2) provide access to and authorize inspection of the property by municipal employees to ensure that the improvements or repairs are made according to the specifications and conditions of the agreement;
- (3) limit the uses of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect;
- (4) provide for recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements or repairs as provided by the agreement;

(5) contain each term agreed to by the owner of the property;
(6) require the owner of the property to certify annually to the governing body of each taxing unit that the owner is in compliance with each applicable term of the agreement; and

(7) provide that the governing body of the municipality may cancel or modify the agreement if the property owner fails to comply with the agreement.

(b) An agreement made under Section 312.204 or 312.211 may include, at the option of the governing body of the municipality, provisions for:

(1) improvements or repairs by the municipality to streets, sidewalks, and utility services or facilities associated with the property, except that the agreement may not provide for lower charges or rates than are made for other services or properties of a similar character;

(2) an economic feasibility study, including a detailed list of estimated improvement costs, a description of the methods of financing all estimated costs, and the time when related costs or monetary obligations are to be incurred;

(3) a map showing existing uses and conditions of real property in the reinvestment zone;

(4) a map showing proposed improvements and uses in the reinvestment zone; and

(5) proposed changes of zoning ordinances, the master plan, the map, building codes, and city ordinances.

SECTION ____ Subsections (a) and (c), Section 312.206, Tax Code, are amended to read as follows:

(a) If property taxes on property located in the taxing jurisdiction of a municipality are abated under an agreement made under Section 312.204 or 312.211, the governing body of each other taxing unit eligible to enter into tax abatement agreements under Section 312.002 in which the property is located may execute a written agreement with the owner of the property not later than the 90th day after the date the municipal agreement is executed. The agreement must contain terms identical to those contained in the agreement with the municipality providing for the portion of the property that is to be exempt from taxation under the agreement, the duration of the agreement, and the provisions included in the agreement under Section 312.205, even if the value of the property at the time the agreement is executed is not the same as its value when the municipal agreement was executed and even if improvements or repairs have been made to the property since the municipal agreement was executed. If the governing body of the taxing unit by official action at any time before the execution of the municipal agreement expresses an intent to enter into an agreement with the owner of property under this subsection or to be bound by the terms of the municipal agreement if the municipality enters into an agreement under Section 312.204 or 312.211 with the owner relating to the property, the terms of the municipal agreement regarding the share of the property to be exempt in each year of the municipal agreement apply to the taxation of the property by the taxing unit. If the taxing unit that expressed its intent to enter into an agreement or to be bound by the municipal agreement is a county, those terms

of the municipal agreement also apply to the taxation of the property by a taxing unit in the county to which a county tax abatement agreement would apply under Section 312.004.

(c) If the governing body of a municipality designates a reinvestment zone that includes property in the extraterritorial jurisdiction of the municipality, the governing body of a taxing unit eligible to enter into tax abatement agreements under Section 312.002 in which the property is located may execute a written agreement with the owner of the property to exempt from its property taxes all or part of the value of the property in the same manner and subject to the same restrictions as provided by Section 312.204 or 312.211 for a municipality. The taxing unit may execute an agreement even if the municipality does not execute an agreement for the property, and the terms of the agreement are not required to be identical to the terms of a municipal agreement. However, if the governing body of another eligible taxing unit has previously executed an agreement to exempt all or part of the value of the property and that agreement is still in effect, the terms of the subsequent agreement relating to the share of the property that is to be exempt in each year that the existing agreement remains in effect must be identical to those of the existing agreement.

SECTION __. Subsection (a), Section 312.402, Tax Code, is amended to read as follows:

(a) The commissioners court may execute a tax abatement agreement with the owner of taxable real property located in a reinvestment zone designated under this subchapter. The execution, duration, and other terms of an agreement made under this section are governed by the provisions of Sections 312.204, ~~[and] 312.205, and 312.211~~ applicable to a municipality. Section 312.2041 applies to an agreement made by a county under this section in the same manner as it applies to an agreement made by a municipality under Section 312.204 or 312.211.

SECTION __. A tax abatement agreement under Section 312.211 applies only to ad valorem taxes imposed on or after January 1, 1998.

The amendment was read and was adopted by a viva voce vote.

CSHB 1239 as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1239 ON THIRD READING

Senator Brown moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1239** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 0.

Absent-excused: Armbrister, Bivins, Harris, Luna, Nelson, Shapiro.

CSHB 1239 was read third time and was passed by a viva voce vote.

HOUSE BILL 853 ON SECOND READING

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 853, Relating to the prosecution of an offense related to the failure to maintain financial responsibility for a motor vehicle.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 853 ON THIRD READING

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 853** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 0.

Absent-excused: Armbrister, Bivins, Harris, Luna, Nelson, Shapiro.

HB 853 was read third time and was passed by the following vote: Yeas 25, Nays 0. (Same as previous roll call)

**COMMITTEE SUBSTITUTE
HOUSE BILL 3306 ON SECOND READING**

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

CSHB 3306, Relating to penalties and interest, writs, suits, judgment amounts, right of redemption, and distribution of proceeds in ad valorem tax matters.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 3306 ON THIRD READING**

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3306** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 0.

Absent-excused: Armbrister, Bivins, Harris, Luna, Nelson, Shapiro.

CSHB 3306 was read third time and was passed by a viva voce vote.

**MOTION TO PLACE
COMMITTEE SUBSTITUTE
HOUSE BILL 2258 ON SECOND READING**

Senator Lindsay moved to suspend the regular order of business to take up for consideration at this time:

CSHB 2258, Relating to the imposition of taxes or fees in certain water districts.

POINT OF ORDER

Senator Gallegos raised a point of order that **CSHB 2258** was in violation of Senate Rule 7.12(b)(10) as it relates to the bill analysis, stating that **CSHB 2258** did not have a current bill analysis attached.

POINT OF ORDER RULING

The Presiding Officer, Senator Truan in Chair, ruled that the point of order was well-taken and sustained.

SENATE RESOLUTION 841

Senator Zaffirini offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 75th Legislature, Regular Session, 1997, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **SB 273** to consider and take action on the following matters:

(1) Senate Rules 12.03(3) and (4) are suspended to permit the committee to add text in proposed Section 403.026(b), Government Code, to read as follows:

(6) the Texas Department of Insurance, appointed by the commissioner of insurance;

(7) the office of the attorney general, appointed by the attorney general; and

(8) consumer groups representing senior citizen interests, appointed by the executive director of the Texas Department on Aging.

Explanation: This change is necessary to include representatives of the Texas Department of Insurance, the office of the attorney general, and consumer groups on the interagency work group so that the group is able to provide comprehensive information to the comptroller for inclusion in the senior citizen consumer guide.

(2) Senate Rule 12.03(1) is suspended to permit the committee to change text in proposed Section 403.026(i), Government Code, from "Subsections (b)(2)-(5)" to "Subsections (b)(2)-(7)".

Explanation: This change is necessary to provide the correct reference to "Subsections (b)(2)-(7)" to reflect the additional representatives added to the interagency work group and identified in Item (1) of this resolution.

(3) Senate Rules 12.03(3) and (4) are suspended to permit the committee to add text in proposed Section 403.026, Government Code, to read as follows:

(l) To the extent practicable, the comptroller shall ensure that the guide is available to the public in a large-print format and in other alternate formats as necessary to enable all consumers to use the guide.

(m) In conducting the work needed to develop the statewide consumer guide for senior citizens, the interagency work group shall consult with

consumer and provider groups involved in the delivery of long-term care services.

(n) The work group shall also develop and submit to the comptroller:

(1) a list of necessary senior services that are not generally available;

(2) recommendations for improving coordinated delivery of a continuum of care for senior citizens; and

(3) recommendations relating to a comprehensive bill of rights for senior citizens.

Explanation: This change is necessary to ensure that the senior citizen consumer guide is available in large-print and other alternate formats and to ensure that the working group is fully utilized by requiring the group to develop broad recommendations relating to senior citizens and aging.

(4) Senate Rule 12.03(3) is suspended to permit the committee to add text in proposed Section 101.031(b), Human Resources Code, to read as follows:

The agency shall make the guide available in a large-print format and in alternate formats as necessary to enable all senior citizens to use the guide.

Explanation: This change is necessary to ensure that the senior citizen consumer guide is available in large-print and other alternate formats.

The resolution was read and was adopted by the following vote:
Yeas 25, Nays 0.

Absent-excused: Armbrister, Bivins, Harris, Luna, Nelson, Shapiro.

MEMORIAL RESOLUTIONS

SCR 108 - by Carona: In memory of Judge Mike Schwille of Dallas.

SR 830 - by Nixon: In memory of Bertis Matlock of Nacogdoches.

SR 839 - by Truan: In memory of Rebecca Hinojosa-Guerra of Willacy County.

CONGRATULATORY RESOLUTIONS

SCR 107 - by Carona: Commending McShan Florist, Incorporated, in Dallas.

SR 831 - by Carona: Congratulating Paul Pettie of Lake Highlands.

SR 832 - by Carona: Congratulating Pastor Don Emmitte of Weatherford.

SR 833 - by Lucio: Congratulating Ciro Trevino of Hidalgo County.

SR 834 - by Lucio: Congratulating Glen David Segrato.

SR 835 - by Lucio: Congratulating Garrison Good Card and Bill Card.

SR 836 - by Lucio: Congratulating the citizens of Brownsville.

SR 837 - by Shapiro: Congratulating Jack Evans of Dallas.

SR 838 - by Barrientos: Congratulating Christian Ray González of Austin.

SR 840 - by Truan: Congratulating Rodolfo Omar Garza of Corpus Christi.

ADJOURNMENT

On motion of Senator Brown, the Senate at 3:57 p.m. adjourned until 9:30 a.m. tomorrow.

APPENDIX

SENT TO GOVERNOR

May 23, 1997

SB 1406, SCR 101

**OFFICIAL MEMORANDUM
STATE OF TEXAS
OFFICE OF THE GOVERNOR**

MESSAGE

I hereby agree to return **SB 1568** to the Senate for further consideration at the request of the Legislature presented by **SCR 101**.

Article IV, Section 14, of the Texas Constitution directs when and how the Governor can approve or veto any bill passed by both houses of the Legislature. In this instance, the Governor has taken no action on Senate Bill No. 1568 and Legislature has requested by Senate Concurrent Resolution 101 that Senate Bill No. 1568 be returned to the Senate. Pursuant to established case law, and while under no obligation to comply with the request, Senate Bill No. 1568 is hereby returned to the Senate for further consideration.

/s/ Governor George W. Bush
May 23, 1997